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The Dyer bill in Congress : a history of the first major attempt to curb lynching in the United States by federal legislation

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THE DYER BILL IN CONGRESS: A HISTORY OF THE FIRST MAJOR ATTEMPT TO CURB LYNCHING IN THE UNITED STATES BY FEDERAL LEGISLATION

BY

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PREFACE

This historical account of the Dyer Anti-Lynching Bill of 1920 has been undertaken for two main purposes. The first may be termed the author's interest in lynching as an American institution. The second is a desire to portray clearly the facts concerning the first major legislative attempt to curb the practice by Federal legislation. The author has no private grudge to present and no special interests to serve on the subject. Consequently, this may be taken as an objective analysis of the arguments pro and con on a proposed legislative measure.

Since the major argumentation occurred in the House, whereas the Senate merely filibustered or repeated those same arguments, most of the contents of this work are presented from the House and one chapter is devoted to the manner in which the Senate disposed of the Bill.

The author proposes to refer to the Bill al-

ways with a capital "B" that no confusion may arise as to what legislation is concerned in any given statement.

A definite attempt has been made to provide local color and to give the reader a glimpse of the attitudes of the day. For this reason, quotations have been used freely from Congressional sources. One thing was certainly impressed upon the writer's mind and that was the general culture and ability of the Congressmen. On the lynching issue arguments were often tinged with an over-abundance of emotion. Nevertheless, the language, the adroitness, the beauty of speech proclaimed the fine forensic background of many of our representatives in Washington.

The author wishes to make clear that he is attempting to present only the arguments of the Congressmen whether these arguments were good or bad, complete or incomplete in their analysis. This is the history of a legislative measure, not a dissertation upon the subject of lynching in general. In this literary effort the method of presentation has been to de-emphasize chronological development and to present the major and minor issues of the Bill itself as

argued by its proponents and opponents. This procedure has been followed in order to avoid a mere condensation of the Congressional Record. Instead, there is a desire to gather all the important arguments into a logical, orderly, and consolidated series; for as those familiar with the Record will testify, arguments rarely answer each other directly. Usually pages and pages of new arguments, different issues, and even new subjects intervene.

This leads the author to the statement that because of the manner in which debates appear in the Record, he found it particularly gratifying to attempt a "round up", so to speak, of the myriad of speeches, committee reports, etc. that constituted the total forensic effort on this particular measure and to separate the total into its logical subject heads, to sift major and minor arguments into separate divisions and finally to derive one consolidated account. If he has succeeded in reaching this objective, he feels that his effort will not have been in vain.

Ernest Poletti

CHAPTER I

PRELUDE TO THE DYER BILL

A DEFINITION OF LYNCHING

Before actually considering the context of the Dyer Bill, it is relevant to consider a few of the pertinent elements that preceded its introduction on the floor of Congress. In other words the writer shall attempt to present a cross section of some of the ideas of the people of that day in respect to the lynching problem. Although the Bill itself defines the crime of lynching, as the reader shall see in the chapter devoted to the contents of the measure, legal minds were doing their best to find an adequate definition long before this legislation appeared.

The typical definition read about as follows: Lynching "is the infliction of punishment without a legal trial, as by a mob or by any unauthorized persons".[1] This type of definition was defective in that it was not sufficiently inclusive. It did not take in the illegal execution of a legally convicted criminal, for instance. However, one cannot criticize the above definition too severly inasmuch as one finds that out of twelve statutory definitions, no two were

[1] E. McCrady, "Lynch Law and South Carolina", Nation, Vol. LXXVI, page 52 (Jan. 15, 1903).

the same. Some included beatings as well as murders. Others claimed the victim must be taken from the custody of peace officers.

After considering many attempts to define the crime, the writer happened upon this fairly modern one: "Lynching is the killing or aggravated injury of a human being by the act or procurement of a mob".[2] This is certainly a broader interpretation. However, it must be remembered that in early American history lynching was often condoned, and punishment restricted to very limited and severe cases.

ORIGIN of LYNCHING

The name and pedigree of lynching is often disputed, one early writer asserted. "Some trace it back to James Fitz-Stephen Lynch, mayor of Galway in the end of the fifteenth century, who hanged his own son out of a window, in spite of popular clamor, and in execution of a lawful sentence which his inferior officers refused to carry out."[3] Very likely lynching is inherently American. It may have some foundation in American Indian practices. One author claims it began with a certain John Lynch, an Irishman and a farmer who

[2] J. H. Chadbourn, Lynching and the Law, page 47.

[3] N. J. D. Kennedy, "Lynch", Juridical Review, Vol. III, page 217 (1892-96).

was said to have been a Justice of the Peace in Virginia or Carolina in the seventeenth or eighteenth century. He was supposed to be judge over a large area and chastised offenders by flogging them, a punishment that lynching still retains.[4]

Other writers trace lynchings back to the Regulators of the Carolinas who met at Lynch's Creek to inflict illegal whippings.[5] However, Mr. McCrady, previously cited, felt sure that no such connection existed. He said the Lynch family of South Carolina were great philanthropists and patriots. He objected to connecting a practice to their name when they would most certainly have condemned that practice.[6]

CAUSES of LYNCHING

Now it may be of interest to touch upon some of the causes to which the people, previous to the Dyer Bill, attributed lynchings. One of these was laxity of law. One writer contrasted the English law of the times with our own, disclosing that in England no criminal appeals were allowed, whereas in the United States there were

4 Ibid.

5 A. Matthews, "Lynch Law Once More", Nation, Vol. LXXVI, page 91 (Jan. 29, 1903).

6 E. McCrady, "Lynch Law and South Carolina", Nation, Vol. LXXVI, page 531 (Jan. 15, 1903).

"appeals on appeals". England had a much finer record for suppressing crime than did the United States. The element of delay engendered by appeals made it difficult to suppress public passion, and lynching was the natural result.[7]

To demonstrate just how lax the law was take the following case: A Negro was taken out of jail and lynched. An attempt was made to punish the lynchers, but the attempt failed. The judge in charging the grand jury, laid down the doctrine that when a mob is hurried by some mysterious metaphysical and almost electric frenzy to commit a crime of violence, the participants are absolved from guilt, and are not proper subjects of punishment.

A certain Bartholomew Shea shot down one Robert Ross at the polls in a very plain case of murder, writes one journalist, but appeals caused an eighteen months delay. Finally sentenced to death, the murderer's execution was postponed one year. He was backed by a political machine that used threats and intimidation to secure an appeal for clemency to the chief executive of the state.[8]

Too may stays of execution, chances for escape,

7 D. M. Means, "Lynch Law", Nation, Vol. LLXV, page 7 (July 1, 1897).

8 W. Stevens, "Lynching and the Law's Delays", Nation, Vol. LXI, page 426 (Dec. 12, 1895).

and technicalities for evading justice are cited by another journalist of the period as legal laxity that caused lynchings.[9] Another writer urges the retraction of the power of clemency exercised by state governors, asks that appeals be severely limited, and seeks that the execution of a judgment be required to occur in a few days at most after its rendition.[10]

W. Roberts attributed some of the legal laxity to the practice of easing up on all law enforcement near election day.[11]

An editorial in the Chamber's Journal allocated to the almighty dollar the cause for most legal laxity.[12]

A further example of legal laxity may be found in the abuse of the challenging privilege. "Under the present system", wrote one author, "any chicaning pettifogger can pack a jury with idiots, as a Georgia magistrate expressed it, by excluding all whose superior intelligence or means of information has enabled them

9 D. M. Means, "Lynch Law", Nation, Vol. LXV, page 7 (July 1, 1897).

10 W. Stevens, "Lynching and the Law's Delays", Nation, Vol. LXI, page 426 (Dec. 12, 1895).

11 W. Roberts, "The Administration of Justice in America", Fortnightly Review, Vol. LVII, page 91 (Jan. 1, 1892).

12 Editors, "Lynching in America", Chamber's Journal, Vol. LXVII, page 317 (May 17, 1890).

to form an opinion of the case."[13]

Yet another demonstration of legal laxity may be found in the lack of effort to enforce the law on the part of officials.

> The Augusta Herald says that if he (the governor) had taken the proper precaution he might have prevented the lynching:
>
> "He acknowledges that he knew of the prospective tragedy three hours before it occurred. He also knew that a diligent search for the criminal had been in progress for several days, and that if he were caught his life wouldn't have been worth a groat. But we have yet to hear of any effort he made to forestall mob violence. It ought to have been practicable to control the district in which the lynching was liable to occur. Certainly it was practicable to request and secure from the department of the gulf a sufficient detail of regulars to go to the scene of the trouble and prevent a lynching. Instead of that the governor was telephoning the sheriff to raise a posse--when every male citizen according to reports was in the mob. He was quibbling over details in order to save the petty reward offered by the state, while the Negro was left to his fate. It wouldn't have been good politics to call out the Federal troops to suppress a mob; but it would have been part of a good chief executive, determined to enforce the laws of the state.".[14]

Other writers proclaimed astonishment at the way officers went to great trouble to catch a criminal and then let him escape because of taking so few precautions. Naturally this made lynching easy.

A second main cause for lynching was attributed to the prevalence of crime amongst the Negroes and

13 F. L. Oswald, "Lynch Epidemics", North American Review, Vol. CLXV, page 119 (July, 1897).

14 Editors, "Lynching and Southern Sentiment", Outlook, Vol. LXII, page 200 (May 27, 1899).

especially to the crime of assault on white women.[15]

A third cause was given as politics and religion.

> Politics and religion have somehow influenced the operations of mob law, especially in rural districts throughout the South. It is everywhere remarked that a Negro preacher and a white politician of lowest grade always have their hands in every race riot, race quarrel and lynching. The trouble generates itself in the curious fact that what the whites as a body are for, the Negroes are against. You may take this as a universal rule clinched by a few notable exceptions. In any neighborhood nothing is better settled than that if the white politician advocates a certain measure, the Negro preacher opposes it, right or wrong and vice versa; if the village whites favor a street improvement or the building of a town hall, the blacks are against it to a man. And while this antagonism runs very mildly in a general way, every public movement, from a political mass movement to a lynching partakes of it.[16]

An editorial in the "Spectator" says that the North's treatment of the South after the Civil War is still another cause for lynching.[17]

REMEDIES SUGGESTED

Many indeed were the remedies suggested--some tried--some merely conceived from arm chair philosophizing and advocated in the era preceding the Dyer Bill.

15 A Southern Lawyer, "Remedies for Lynch Law", Sewanee Review, Vol. VIII, page 2 (Jan., 1900).

16 M. Thompson, "The Court of Judge Lynch", Lippincott's Magazine, Vol. LXIV, page 257 (Aug., 1899).

17 Editors, "Lynch Law in America", Spectator, Vol.LXXII, page 744 (June 2, 1894).

One journalist went so far as to say that one should teach children to love animal pets in grammar school so that a love for all animal life might gradually be built up.[18] Another pleaded for the teaching of humanity from every pulpit and in every classroom. He said that if such a practice were generalized, lynching would cease.[19]

Several writers advocated that the legal procedure should be made less lax and less technical. Attempts to get quicker trials were many, but were usually unsuccessful. Governor Atkinson of Georgia was cited as saying that lynch law was so seldom used in his state because of prompt enforcement. The Governor of North Carolina declared that most of the lynchings in his state were due to delay in law enforcement. He suggested that in atrocious crimes where lynching might occur as a result, the governor should be able to call for an immediate trial; and in case of appeal, he could call the appellate court as soon as possible. Governor Johnston of Alabama expressed the same idea. Governor Bloxham of Florida wanted the Constitution amended so that a circuit judge might be appointed for the state at large. Governor Atkinson of Georgia desired giving to the trial judge the sole power to pass upon motions to

18 S. R. Taber, "A Remedy for Lynching", Nation, Vol. LXXV. page 478 (Dec. 18, 1902).

19 Q. Ewing, "How Can Lynching Be Checked in the South", Outlook, Vol. LXIX, page 360 (Oct. 12, 1901).

continue. He would also deny the Supreme Court the power to grant a new trial on account of alleged error.

One writer felt that whenever there was a trial the defendant could easily secure skillful counsel and evade justice. He claimed that a trial was "not so much an investigation of the truth of the real matter at issue as a display of legal skill on the part of counsel". In such cases the mob hastened to lynch the defendant.[21] Another remedy for laxity of the law was to require trial to be at the term at which the indictment was found. If continuance was necessary, the court term should be adjourned to the earliest day practical. The prisoner must cease to have advantages over the state such as more challenges than the state is allowed. In North Carolina, for instance, the prisoner was allowed twenty-four challenges, while the state had only four.[22] Judges should be chosen for life and should be paid well.[23] "Provide the death penalty for rape", cries one writer.[24] But another adds that capital punishment should be abolished

20 E. L. Pell, "Prevention of Lynch Law Epidemics", Review of Reviews, Vol. XVII, page 323 (March, 1898).

21 W. Clark, "The True Remedy for Lynch Law", American Law Review, Vol. XXVIII, page 802 (Nov.-Dec., 1894).

22 Ibid.

23 A Southern Lawyer, "Remedies for Lynch Law", Sewanee Review, Vol. VIII, page 1 (Jan., 1900).

24 E. L. Pell, "Prevention of Lynch Law Epidemics", Review of Reviews, Vol. XVII, page 324 (March, 1898).

in all other crimes in order to get a less reluctant and thereby a quicker conviction.[25]

"Get better officials", exclaimed one writer. The laws were all right, he said; what was necessary was better officials to enforce those laws. His advice was to keep clear of demagoguery. Governor O'Ferrall of Virginia cut lynchings from sixty-two to three per year in his state by strict law enforcement. Some wanted a rural police force. One group advocated that governors remove from office any sheriff who allowed a lynching.[26] Another added that such a sheriff should never hold a state office again. Governor Atkinson of Georgia desired that if the officer was not required to protect his prisoner at the hazard of his own life, he should free and arm the prisoner (no white sheriff would ever arm a Negro against a white mob, however).[27]

Some suggested the remedy of fining the county in which the crime occurred. Others sought to fine the city. Note the following description of the latter:

> More than a century and a half has passed since an Edinborough mob broke into Rorteous' prison, and hanged him. Rorteus had been convicted of homicide,

25 A Southern Lawyer, "Remedies for Lynch Law", Sewanee Review, Vol. VIII, page 1 (Jan., 1900).

26 Editors, "Mob Rule and the Texas Horror", Public Opinion, Vol. XIV, page 448 (Feb. 11, 1893).

27 E. L. Pell, "Prevention of Lynch Law Epidemics", Review of Reviews, Vol. XVII, page 323 (March, 1898).

> and sentenced to the gallows by the Supreme Criminal Court. The sentence had been respited by what was regarded as an arbitrary exertion of the royal prerogative. Yet the deed was murder. No one justified it. The authorities made prompt investigation. The principal actors fled the land, to avoid punishment. The city paid a large indemnity to the victim's widow, and narrowly escaped having its walls dismantled, and its guards disbanded. That any similar outbreak could now take place in our city is scarcely possible, and that it should be approved is inconceivable.
>
> But in the United States the tendency drifts toward erecting the casual will of any temporary majority into a standard of right and wrong.[28]

Other suggested remedies were: (1) Try cases against women privately in order to get them to testify. (2) Have a commission publish circumstances of crimes to foster healthier public opinion. (3) Stop Negroes from rape and shielding rapists.[29]

PUBLIC OPINION AND LYNCHING

Opinion of the era that led to the Dyer Bill was varied. Many thought that lynching was actually beneficial to society. The Galveston News reported with respect to one lynching,

> If the people of Paris had left Henry Smith alive, the venue in this case would have been changed, the trial would have been delayed, the case would have been continued, an appeal would have been taken, the judgment would probably have been reversed on the plea of denial of a fair trial. If brought to the scaffold at all, it would have been

28 N. J. D. Kennedy, "Lynch", Juridical Review, Vol. III, page 222 (1892-96).

29 A Southern Lawyer, "Remedies for Lynch Law", Sewanee Review, Vol. VIII, page 1 (Jan., 1900).

after years of nonsensical delay.[30]

One observer reported that lynching was an excellent judicial process.

> A mass meeting was held in the most public square of New Orleans. It was not a crowd of ruffians; the leading business men, including the most influential lawyers, doctors, notaries, were most conspicuous, and a calm explanatory speech was made by a leader of reforms in politics and municipal economy. There was no appearance of undue excitement, no blood-thirsty appeal was made. The speaker simply stated the fact that organized murder had shown itself able to laugh at the courts and juries of New Orleans and that the time had come for the people to defend themselves, by doing what juries and sheriffs ought, but dared not, to do. In accordance with what that very deliberate and dispassionate speaker suggested as a remedy for the existing evil, a remarkably solemn and orderly procession of armed men soon made its way to the prison and there killed the Italians.[31]

Another observer stated that although the South had folks who opposed lynching, these people were in the minority. Still another remarked that the "silence and seeming condonation grow more marked as the years go by".[32]

Concerning the fundamental builder of public opinion, one journal reported,

> As to the newspapers, they represent two interests, the pockets of their proprietors and the political party to which they belong. Instead of leading they follow, and instead of trying to teach the

[30] Editors, "The Texas Horror", Public Opinion, Vol. XIV, page 448 (Feb. 11, 1893).

[31] M. Thompson, "The Court of Judge Lynch", Lippincott's Magazine, Vol. LXIV, page 254 (Aug., 1899).

[32] I. B. Wells-Barnett, "Lynch Law in America", Arena, Vol. XXIII, page 24 (Jan., 1900).

> working classes, which are necessarily their largest patrons, they flatter their vices and applaud their follies. Hardly do they urge even a mild remonstrance against a popular outbreak. It would not pay; they would lose subscribers.[33]

Some of the advocates of lynching justified it on the basis of the laxity of law discussed in the preceding section of this thesis. Others claimed it was justified in certain crimes, particularly rape, because this was a crime no court could properly avenge. Most justified it as a vigilante necessity for preserving order.

But there were also those who condemned the practice. One author in his condemnation demonstrated how little provocation there was for lynching in many instances,

> The impeachments which our midnight reformers have made pretexts of murderous assaults include charges of profanity, financial extravagance, Sabbath breaking, premature marriages, non-conventional dress ("bloomers", etc), agnosticism, unsocial habits, disregard of warnings, and even failure to patronize local markets and industries. In the Western Alleghanies a gang of masked hoodlums smashed the scant household furniture of a crippled cobbler who had been caught reading Darwin on Sunday, and ordered a censor out of his house; and a Texas physician, first bullied in his office and then trying to leave town, was attacked at a depot by a cowhide brigade and beaten out of a human shape because he refused to join the law and order league.[34]

[33] W. Roberts, "Administration of Justice in America", Fortnightly Review, Vol. LVII, page 106 (Jan. 1, 1892).

[34] F. L. Oswald, "Epidemics of Lynch Law", North American Review, Vol. CLXV, page 119 (July, 1897).

To demonstrate how little life meant, just analyze the following anecdote related by an ex-attorney-general of Nevada,

> In a certain small town out west, a stranger once presented a cheque to the cashier of a bank who was also a county judge.
>
> "The cheque is all right, sir", said the judge. "But the evidence you offer in identifying yourself as the person to whose order it is drawn is hardly sufficient".
>
> "I have known you to hang a man on less evidence", was the stranger's response.
>
> "Quite likely", replied the judge; "but when it comes to letting go of cold cash, we have to be careful".[35]

Here's what a visiting foreigner had to say about lynching as practiced in the United States;

> Your Republic may be the greatest and best form of government the world has yet known; this question I will not stop to discuss, but I maintain that, when such things as I have recounted take place within its borders, and the perpetrators go unpunished, your government is neither great nor good, your freedom is a delusion, and your independence a pretense.[36]

The Detroit Free Press even suggested missionary work in America to replace foreign fields:

> We have said that outsiders can do little in such a matter; but it is well worth the while of those who are interested in missionary work to ask themselves whether here is not a field where missionary work is as much needed as in the Far East or the wilds of Central Africa.[37]

[35] Editors, "Lynching in America", Chamber's Journal, Vol. LXV, page 318 (May 17, 1890).

[36] W. Roberts, "Administration of Justice in America", Fortnightly Review, Vol LVII, page 107 (Jan. 1, 1892).

[37] Editors, "Rule of the Mob", Public Opinion, Vol. XIV, page 448 (Feb. 11, 1893).

Again from the Detroit Free Press came the following excerpt concerning the lynching of one, Smith, who had committed an atrocious crime. Here the author does not stress the need for revenge because of the atrocity of the crime. He has a rather interesting approach of an entirely different nature from the conclusions drawn by lynching's advocates.

> The first crime indicates only a single individual imbruted or utterly lacking in the attributes of humanity. The second shows an entire community on the same level. In a community with some respect for law and order such a fiend as Smith would be an almost inconceivable monstrosity. In such a community as turned out to torture and burn him it is not at all difficult to conceive of such a being.[38]

With this survey of the ideas prevalent in the country at large, the Dyer Bill is presented.

38 Editors, "The Texas Horror", Public Opinion, Vol. XIV, page 448 (Feb. 11, 1893).

CHAPER II

CONTENTS AND SHORT HISTORY OF THE BILL

The original copy of the Bill occupies a space of fifty-seven pages. Since the Library of Congress recommends that the Bill be presented in digest form, the writer will follow that procedure.

It should be noted that the Bill (originally known as House Resolution 14097) was first introduced in the House on May 17th, 1920, and was referred to the Committee on the Judiciary. It was labeled as "a bill to assure to persons within the jurisdiction of every state the equal protection of the laws and to punish the crime of lynching."

The Commitee on the Judiciary reported the measure back without amendment on May 26, 1920 (House Report, Part 1, hereinafter referred to frequently). A minority report was filed on May 26, 1920 (House Report 1027, Part 2). The wording of the Bill as included in this report was:

The bill reported by this committee seeks (1) to prevent lynchings as far as possible; (2) to punish the crime of lynching; and (3) to compel the community in which the crime is committed to make such compensation as is possible.....

SECTION I. Whenever any criminal prosecution shall have been instituted or any warrant of arrest shall have been issued, or any arrest shall have been made, or attempted, with the purpose and intent of criminal prosecution, in any State court, against any person within the jurisdiction of the State, whether he be a citizen of the United States or not, any such person shall appeal, as hereinafter provided, for the protection of the Government of the United States upon the ground that he has reasonable cause to apprehend that he will be denied the equal protection of the laws by the State within whose jurisdiction he is, or by any officer or inhabitant of such State, such person shall be entitled to the protection of the courts and officers of the United States to the end that the protection guaranteed by the Constitution of the United States may be given.

SECTION 2. That any person within the jurisdiction of any State charged with a felony or other crime who shall file with the clerk of the district court of the United States within whose jurisdiction he is his duly verified petition showing (1) that he is charged with, or has been arrested for, the alleged commission of, or participation in, some felonious or criminal act, the nature of which shall be set out in his petition; (2) that he has reason to apprehend that, because of his race, nationality, or religion, which shall be specifically stated in his petition, the petitioner is likely to be denied the equal protection of the laws, either by the courts, the officers of the law, or other inhabitants of the State within whose jurisdiction he is; and (3) that some other person or persons of his race, color, nationality, or religion, within the jurisdiction of such State, charged with an offense similar to that with which the petitioner is charged, have been put to death without trial or brutally assaulted or otherwise maltreated, or have been denied trial by due course of law in the courts of such State upon similar charges, because of the

race, color, nationality, or religion of such person or persons, he shall be entitled to and shall receive the protection of all officers of the United States. Upon the filing of such petition with the clerk of such court, it shall be the duty of such clerk to issue forthwith to the marshal a warrant commanding him to bring the body of such petitioner into court for hearing upon such petition.

SECTION 3. That it shall be the duty of the marshal upon receipt of such warrant to arrest and detain the petitioner and to protect him from assault or injury; and in case such petitioner is in the custody of any State or municipal officer, sheriff, marshal, constable, bailiff, jailer, warden, policeman, or other officer or person, upon a warrant to hold petitioner for prosecution in any State court for felony or other crime, such marshal shall take such petitioner from such State official, receipting to him for the body of petitioner.

SECTION 4. That when said petitioner shall have been brought into court he shall be entitled to a summary hearing upon his petition, and, in case he has been taken from the custody of any State officer, he shall, in event his petition is not sustained, be surrendered by the marshal to the State officer from whom he had been taken; and if he has not been taken from the custody of any State or municipal or other officer, he shall, in the event his petition is not sustained, be set at liberty, and the costs of the proceeding shall be taxed against him. In case the petition is sustained by the court, the petitioner shall be remanded to the custody of the marshal for protection until petitioner may be tried in the proper district court of the United States upon such indictment, information, or other charge as may have been or may be made or returned against him, and for the purpose of such trial such district court shall have and possess jurisdiction to try and determine any and all proceedings upon indictment or information which may be removed from any State court under this act.

SECTION 5. That the removal of criminal prosecutions provided in this act shall conform in all respect to removals in other cases provided for by section 31 and 32 of the act entitled "An act to codify, revise and amend the laws relating to the judiciary," approved March 3, 1911.

Sections 6 and 7 simply increase the penalty now imposed by law upon persons who "knowingly and willfully obstruct, resist, or oppose any officer of the United States or other person duly authorized" in serving any mesne process, warrant, rule, or order or other legal writ or process of any United States court, or assault, beat, or wound such officer or any person lawfully in his custody, from a maximum fine of $300 to one of $10,000, and from a maximum imprisonment of one year to one of ten years; and provide that in case of the rescue or abduction of any person in custody of a Federal officer and the subsequent killing of the person so taken, all persons engaged in the unlawful taking shall be guilty of murder.

Sections 8 and 9 are as follows:

SECTION 8. That the putting to death within any State of any person within the jurisdiction of the State by a mob or riotous assemblage of three or more persons openly acting in concert, in violation of law and in default of protection of such person by such State or the officers thereof, shall be deemed a denial to such person by such State of the equal protection of the laws and a violation of the peace of the United States and an offense against the same.

SECTION 9. That every person participating in such mob or riotous assemblage by which such person is put to death, as described in the section immediately preceding, shall be guilty of murder and shall be liable to prosecution, and, upon conviction, to punishment therefor, according to law, in any district court of the United States having jurisdiction in the place where such putting to death occurs.

Section 10 exacts from the county in which a person is lynched a penalty of $10,000, recoverable in an action directed to be brought by the district attorney in the name of the United States for the use of the dependent family, if any, and if there be no dependent family, for the use of the United States.

Section 11 makes every county, through which a person is taken by a mob from the place of his taking to that where he is killed, equally liable to a like penalty for the murder.

Section 12 and 13 punish State and municipal officers, whose negligence, misfeasance, or mal-

feasance may have contributed to a lynching with imprisonment or fine.

Section 14 disqualifies various classes of persons in sympathy with the lynching from serving on juries charged with the trial of such cases.[1]

After a few general remarks had been made in the House on House Resolution 14097, it was dropped. Later it was reintroduced on April 11, 1921, under the same wording as quoted above, but was given the new title of House Resolution 13. The latter was referred once more to the Committee on the Judiciary and reported back with an amendment on October 31, 1921 (House Report 452 also to be frequently cited later).

The amendment read as follows:

That the phrase "mob or riotous assemblage," when used in this act, shall mean an assemblage composed of five or more persons acting in concert for the purpose of depriving any person of his life without authority of law as a punishment for or to prevent the commission of some actual or supposed public offense.

SECTION 2. That if any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection of the life of any person within its jurisdiction against a mob or riotous assemblage, such State shall be reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State, and to the end that such protection as is guaranteed to the citizens of the United States by its Constitution may be secured it is provided:

[1] U. S. Congress, 66th, 2nd sess., House Report 1027 (May 22, 1920) pages 4-6.

SECTION 3. That any State or municipal officer charged with the duty or who possesses the power or authority as such officer to protect the life of any person that may be put to death by any mob or riotous assemblage, or who has any such person in his charge as a prisoner, who fails, neglects, or refuses to make all reasonable efforts to prevent such person from being so put to death, or any State or municipal officer charged with the duty of apprehending or prosecuting any person participating in such mob or riotous assemblage who fails, neglects, or refuses to make all reasonable efforts to perform his duty in apprehending or prosecuting to final judgment under the laws of such State all persons so participating except such, if any, as are or have been held to answer for such participation in any district court of the United States. as herein provided, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment not exceeding five years or by a fine of not exceeding $5,000, or by both such fine and imprisonment.

Any person who participates in a mob or riotous assemblage that takes from the custody or possession of any State or municipal officer any person held by such officer to answer for some actual or supposed public offense and puts such person to death as a punishment for such offense, or any person who participates in any mob or riotous assemblage that obstructs or prevents any State or municipal officer in discharging his duty to apprehend, prosecute, protect, or punish any person suspected of or charged with any public offense and puts such person to death as a punishment for such offense shall be guilty of a felony and on conviction thereof shall be imprisoned for life or for not less than five years.

SECTION 4. That any person who participates in any mob or riotous assemblage by which a person is put to death shall be guilty of a felony, and on conviction thereof shall be imprisoned for life or for not less than five years.

SECTION 5. That any county in which a person is put to death by a mob or riotous assemblage shall forfeit $10,000, which sum may be recovered by an action therefor in the name of the United States against such county for the use of the family, if any, of the person so put to death; if he had no

family, then to his dependent parents, if any; otherwise for the use of the United States. Such action should be brought and prosecuted by the district attorney of the United States of the district in which such county is situated in any court of the United States having jurisdiction therein. If such forfeiture is not paid upon recovery of a judgment therefor, such court shall have jurisdiction to enforce payment thereof by levy of execution upon any property of the county, or may compel the levy and collection of a tax therefor, or may otherwise compel payment thereof by mandamus or other appropriate process; and any officer of such county or other person who disobeys or fails to comply with any lawful order of the court in the premises shall be liable to punishment as for contempt and to any other penalty provided by law therefor.

SECTION 6. That in the event that any person so put to death shall have been transported by such mob or riotous assemblage from one county to another county during the time intervening between his capture and putting to death, each county in or through which he was so transported shall be jointly and severally liable to pay the forfeiture herein provided.

In construing and applying this act the District of Columbia shall be deemed a county, as shall also each of the parishes of the State of Louisiana.

SECTION 7. That if any section or provision of this act shall be held by any court to be invalid, the balance of the act shall not for that reason be held invalid.[2]

The next step involved making a special order (House Resolution 253) that the Bill be argued immediately in Committee of the Whole House as though on the Union Calendar. Whereupon the Bill was debated.

[2] U. S. Congress, 67th, 1st sess., House Report 452 (October 31, 1921) pages 1 and 2.

It passed the House on January 26, 1922 with the amendment and was introduced in the Senate on January 26, 1922. Here it was immediately sent to the Senate Committee on the Judiciary and was reported back with amendments (Senate Report 837) on July 28, 1922. These amendments read:

> On page 3, in line 19, strike out all of section 4 after the word "therein," and insert in lieu thereof the following:
>
> Provided, That it shall be charged in the indictment that by reason of the failure, neglect, or refusal of the officers of the State charged with the duty of prosecuting such offense under the laws of the State to proceed with due diligence to apprehend and prosecute such participants the State has denied to its citizens the equal protection of the laws. It shall not be necessary that the jurisdictional allegations herein required shall be proven beyond a reasonable doubt, and it shall be sufficient if such allegations are sustained by a preponderance of the evidence.
>
> On page 4, in line 17, after the word "shall" and before the word "forfeit," insert the following words:
>
> if it is alleged and proven that the officers of the State charged with the duty of prosecuting criminally such offense under the laws of the State have failed, neglected, or refused to proceed with due diligence to apprehend and prosecute the participants in the mob or riotous assemblage.
>
> On page 5, in line 3, strike out the word "should" and insert in place thereof the word "shall."
>
> The bill, with the amendments reported by the committee, will read as follows:
>
> AN ACT To assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the phrase "mob or riotous assemblage," when used in this act, shall mean an assemblage composed of three or more persons acting in concert for the purpose of depriving any person of his life without authority of law as a punishment for or to prevent the commission of some actual or supposed public offense.

SECTION 2. That if any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection to the life of any person within its jurisdiction against a mob or riotous assemblage, such State shall by reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State, and to the end that such protection as is guaranteed to the citizens of the United States by its Constitution may be secured it is provided:

SECTION 3. That any State or municipal officer charged with the duty or who possesses the power or authority as such officer to protect the life of any person that may be put to death by any mob or riotous assemblage, or who has any such person in his charge as a prisoner, who fails, neglects, or refuses to make all reasonable efforts to prevent such person from being so put to death, or any State or municipal officer charged with the duty of apprehending or prosecuting any person participating in such mob or riotous assemblage who fails, neglects, or refuses to make all reasonable efforts to perform his duty in apprehending or prosecuting to final judgment under the laws of such State all persons so participating except such, if any, as are or have been held to answer for such participation in any district court of the United States, as herein provided, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment not exceeding five years or by a fine of not exceeding $5,000, or by both such fine and imprisonment.

Any State or municipal officer, acting as such officer under authority of State law, having in his custody or control a prisoner, who shall conspire, combine, or confederate with any person to put such prisoner to death without authority of law as a punishment for some alleged public offense,

or who shall conspire. combine, or confederate with any person to suffer such prisoner to be taken or obtained from his custody or control for an alleged public offense, shall be guilty of a felony, and those who so conspire, combine, or confederate with such officer shall likewise be guilty of a felony. On conviction the parties participating therein shall be punished by imprisonment for life or not less than five years.

SECTION 4. That the district court of the judicial district wherein a person is put to death by a mob or riotous assemblage shall have jurisdiction to try and punish, in accordance with the laws of the State where the homicide is committed, those who participate therein: Provided, That it shall be charged in the indictment that by reason of the failure, neglect, or refusal of the officers of the State charged with the duty of prosecuting such offense under the laws of the State to proceed with due diligence to apprehend and prosecute such participants the State has denied to its citizens the equal protection of the laws. It shall not be necessary that the jurisdictional allegations herein required shall be proven beyond a reasonable doubt, and it shall be sufficient if such allegations are sustained by a preponderance of the evidence.

SECTION 5. That any county in which a person is put to death by a mob or riotous assemblage shall, if it is alleged and proven that the officers of the State charged with the duty of prosecuting criminally such offense under the laws of the State have failed, neglected, or refused to proceed with due diligence to apprehend and prosecute the participants in the mob or riotous assemblage, forfeit $10,000, which sum may be recovered by an action therefor in the name of the United States against such county for the use of the family, if any, of the person so put to death; if he had no family, then to his dependent parents, if any ; otherwise for the use of the United States. Such action shall be brought and prosecuted by the district attorney of the United States of the district in which such county is situated in any court of the United States having jurisdiction therein. If such forfeiture is not paid upon recovery of a judgment therefor, such court shall have jurisdiction to enforce payment thereof by

levy of execution upon any property of the county, or may compel the levy and collection of a tax therefor, or may otherwise compel payment thereof by mandamus or other appropriate process; and any officer of such county or other person who disobeys or fails to comply with any lawful order of the court in the premises shall be liable to punishment as for contempt and to any other penalty provided by law therefor.

SECTION 6. That in the event that any person so put to death shall have been transported by such mob or riotous assemblage from one county to another county during the time intervening between his capture and putting to death, the county in which he is seized and the county in which he is put to death shall be jointly and severally liable to pay the forfeiture herein provided.

SECTION 7. That any act committed in any State or Territory of the United States in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such State or Territory, shall constitute a like crime against the peace and dignity of the United States, punishable in like manner as in the courts of said State or Territory, and within the period limited by the laws of such State or Territory, and may be prosecuted in the courts of the United States, and upon conviction the sentence executed in like manner as sentences upon convictions for crimes under the laws of the United States.

SECTION 8. That in construing and applying this act the District of Columbia shall be deemed a county, as shall also each of the parishes of the State of Louisiana.

That if any section or provision of this act shall be held by any court to be invalid, the balance of the act shall not for that reason be held invalid.[3]

The Bill was next debated and finally dropped

[3] U. S. Congress, 67th, 2nd sess., Senate Report 837 (April 20--calendar day, July 28--1922) pages 1-3.

by common agreement of proponents and opponents on July 28, 1922. A filibuster that threatened to block all business caused this finale.

Summary of the Bill

The Bill as first introduced included the following items: (1) If any person who had committed a crime feared he would not be protected by the local government, he could appeal to the federal authorities for protection. (2) The petitioner received a preliminary hearing to establish the merits of his appeal. If the petition was sustained, he must be protected by the United States officers. If his petition was not merited, he was returned to the custody of the local authorities and was assessed the cost of proceedings. (3) Penalties for resisting a United States officer were increased. (4) Any state having jurisdiction over and failing to protect a person from a mob was deemed to have denied him the equal protection of the laws and therefore had committed an offense against the United States. (5) A mob was defined as three or more persons. (6) Any member of a mob engaged in a lynching was guilty of murder and was subject to trial in a district court of the United States. (7) A county in which a lynching occurred

was fined $10,000 by the United States; the money went to the victim's dependents, if any. If there were no dependents, the money went to the United States. (8) Any county through which a victim was taken from the time he was seized until he was killed was subject to the above penalty. (9) Officers guilty of negligence, misfeasance, or malfeasance in connection with a lynching were punishable by fine or imprisonment. (10) Persons in sympathy with the lynching could not serve on juries trying such cases.

The Bill was amended as follows before being argued in the House: (1) Mob was defined as five persons rather than three. (2) Neglect of duty by an officer was clearly defined and was punishable by five years in prison, a fine of $5,000, or both. (3) Any person who helped to take a victim from an officer and lynched him was subject to imprisonment of not less than five years. (4) If any part of this act was held to be unconstitutional, the rest of the act should be unaffected by such a decision.

The Senate amended the Bill once more before considering it: (1) A state was deemed to have denied equal protection of the laws only if the state's officers had been guilty of neglect, misfeasance, or malfeasance

in connection with the crime. (2) Mob was once more defined as three or more persons. (3) Foreigners were especially designated as persons the lynching of whom was a crime against the United States. (4) The District of Columbia and the parishes of Louisiana were construed as counties in the application of this law.

Before proceeding to discuss the Dyer proposal, it should be noted that the Bill as debated in all chapters of this thesis (except "The Dyer Bill in the Senate") was in the form recorded in House Report 452. The chapter on the Senate proceedings discusses the Bill as stated in Senate Report 837. Suppose then that one attempts to discover why the measure was proposed.

CHAPTER III

THE NEED FOR A FEDERAL ANTI-LYNCHING LAW

Proponents of the Bill

The first question naturally to reach the reader's mind might well be: What were the conditions of lynching that motivated the introduction of the Dyer Bill and the hotly contested debates that were waged over it? Generally stated, the conditions referred to may be found in the words of Congressman Dyer, "Lynching is a crime widespread throughout the country, which, in many states, the state authorities have almost wholly failed to prevent or punish."[1]

Just how widespread, then, is lynching? "In the last thirty years from 1889-1918, 3,224 people were lynched, of whom 2,522 were Negroes, and of these 50 were women. The North had 219, the West 156, Alaska and unknown localities 15, and the South 2, 834."[2] Amongst the southern states Georgia led with 386 and Mississippi followed with 373 lynchings.

From 1913 to 1918, the period of five years just preceding the introduction of the Dyer Bill, there were 21 persons lynched in the North and West and 304 in the South.

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1 U. S. Congress, 66th, 2nd sess., H. Rept. 1027 (May 22, 1920) page 1.

2 Ibid.

In 1919, the year that the Dyer Bill was being conceived, seventy-seven Negroes, four whites, and two Mexicans were lynched. Mob outbreaks against Negroes and clashes between the races were reported from twenty-six cities. In Washington six were killed. In Chicago, where the riots lasted six days, thirty-eight were killed. At Omaha the mob tried to hang the Mayor, who had attempted to prevent the lynching of a Negro. They also burned the new county court house. Six were killed at Norfolk, Virginia, and a reception to home-coming Negro troops had to be suspended. In Phillips County, Arkansas, five whites were killed and some twenty-five to fifty Negroes. Among the latter was a successful dentist, who owned a three story building, and a prominent Oklahoma physician.[3] In 1921 fifty-two people were lynched.[4]

One can better understand the conditions of the day by reading the following letter written by a Negro:

> We have a membership of more than 502 who live in the Mexia oil fields, who own large tracts of land, and are surrounded with oil wells and gas wells, and the white people have promised to run us out and treat us like those Negroes in Tulsa, Oklahoma. We want to know, can we get the church to handle our property for us? Can we grant the church the power of an attorney to act for us in time of such great danger? These are awful days for we poor helpless Negroes in the South. The other day a member of my race was burned in Coledge, Texas, about ten miles from me--burned by unmasked men, children, and women--and men jabbed sticks in his mouth, nose and

[3] Ibid., page 2.

[4] U. S. Congress, 67th, 1st sess., House Report 452, (Oct. 31, 1921) pages 3 and 4.

> eyes. This act was done in the day; so if we are mobbed and run out, we want someone to see after our property.[5]

Many of the lynchings mentioned were not mere hangings but were marked by brutality and degeneracy.

> Of many atrocious cases revealed by Governor Dorsey of Georgia concerning his own state's harsh treatment of Negroes this is one of the worst. In the words of the Governor, "the sheriff of this county with two other men were in an automobile on the road to the county seat. They were drinking. The sheriff asked a Negro in the road to get him a drink of water. The Negro answered that he was not at his own home, but that he supposed there would be no objection to getting him a drink of water. The sheriff left the car and struck the Negro twice with a pistol. The man brought the water. The sheriff made him get in the car, carried him 300 yards, and made him leave the car and took him into the woods, where he beat him over the head with a pistol and stick. The bleeding Negro was forced into the car again and made to lie down. He was carried 10 miles, the sheriff kicking him in the body and head. One eye was virtually knocked out. There the sheriff made him get out. He was beaten again on his naked body. The sheriff stopped to cut another stick when one of his companions advised the Negro to run if he wished to live. This he did, hiding in the woods until later a passer-by carried him into town. The sheriff was indicted for assault with intent to murder. The latter was acquitted.
>
> The Negro beaten has the reputation of being a peaceable, law-abiding, hard-working man. He was threatened with death if he testified against the sheriff."[6]

Most of the lynchings in question have shown a definite discrimination against the Negro. The reader has doubtedly already gathered that fact from the statistics

5 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922), page 792.

6 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922), page 1016.

presented. This discrimination was as bad or worse after the World War than before. Immediately prior to the Dyer Bill were a series of atrocities committed against the Negro soldiers who were returning from the front.

> In a vast majority of the cases, lynching seems to have been induced by local prejudice against the race, color, nationality, or religion of the person lynched. It is a chief cause of unrest amongst the Negroes...
>
> "In August of 1917 there took place a riot in Houston, Texas, growing out of friction between the city police and Negro soldiers of the 24th infantry. Of the soldiers court-martialled 18 were executed, 51 sentenced to life imprisonment, and four to brief terms of imprisonment. This greatly shocked the colored people and emphasized their feeling that Negroes were punished more severely than whites."[7]

Yet the Negroes had served admirably in the War and it was largely the recognition of this fact coupled with the manner in which Negroes were treated that aroused the indignation of the proponents of Anti-Lynching legislation.

> No finer tribute has been paid the Negro soldier than by Col. J.A. Moss who said in 1918: "Understanding the Negro as a soldier, I consider myself fortunate in having been assigned to the command of a colored regiment. Of my twenty-three years experience as an officer, I have spent eighteen with colored troops, having commanded Negro troops in the Cuban campaign and in the Philippine campaign, so that what I say about the Negro soldier--my faith, my confidence in him--is based on long experience with him in garrison and the field; in peace and in war. I do not hesitate to make the assertion that if properly trained and instructed, the Negro will make as good a soldier as the world has ever seen. The proper training and instruction of the Negro soldier is a simple problem--it merely consists in treating him like a man, in a fair and

[7] U.S. Congress, 66th, 2nd sess., House Report 1027 (May 22, 1920) page 1.

square way, and in developing the valuable military assets he naturally posesses in the form of a happy disposition, pride in the uniform, tractibility and faithfulness"---I am a native Louisianian.[8]

Distinguished service crosses were awarded by the commanding general of the American Expeditionary forces for extraordinary heroism in action in France to the following named colored officers and enlisted men:

C.G. Young, H.W. Wilson, I.M. Payne, R.A. Brown, C. Merrimon, Corporal Van Horton, L. Watkins, G. Bell, A. Hammond, B. Lewis, C. Crawford, G. Gross, S.H. Johns, C.R. Van Allen.

Colored soldiers fought with special distinction in France in the Forest of Argonne at Chateau-Thierry in Belleau Wood, St. Mihiel Dist., Champagne Sector, Metz, Vosges, and so forth, winning praise from French and American Commanders. Colored troops were nearest the Rhine when the armistice was signed. Entire regiments of colored troops cited for exceptional valor and decorated with the French Croix de Guerre: 369, 371, 372, 365, 366, 368, 370, 377--first battalion.

The Charlotte (N.C.) News says: It is the marvel of the South, as it ought to be the admiration of the whole United States, that when the colored man in the hard stages of the war, through which we are beginning to pass, is being put to the test, he is measuring up to the full valuation of a citizen and a patriot".

...Charleston News and Courier: "The Negroes have met the first test admirable."[9]

It is of little wonder then that the public was aroused by lynchings to so great an extent that the Anti-Lynching Bill was proposed, for the Negro discriminated against was more often than once a war hero.

Not only were the Negroes discriminated against unfairly, but foreigners also suffered at the hands of lyn-

[8] Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922), page 1033.

[9] Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922), page 794.

chers. Let the reader consider a chart presented by the author of the Anti-Lynching Bill:

Indemnities Paid by the United States for Mob Violence

Paid to	Year	Amount
France	1831	285,000.00
Spain	1852	25,000.00
China	1887	147,748.74
	1888	276,619.75
Italy	1891	24,330.90
	1896	10,000.00
	1897	6,000.00
	1903	5,000.00
British Subjects	1895	1,000.00
	1895	1,800.00
Mexico	1898	2,000.00
	1901	2,000.00
Italy	1913	6,000.00
		792,499.39[10]

Diplomatic intercourse was actually broken off between Italy and the United States over the matter of an indemnity for the lynching of Italian citizens at New Orleans in 1891. A typical case is found in the following letter of an Italian consul:

> The officer in charge of the Royal Consulate of Italy at New Orleans to the Royal Embassy of Italy at Washington, D.C.
>
> New Orleans, Sep't. 18, 1899
>
> "I deem it my duty to report to your Excellency the following: Giuseppe Delfino (or Defina) the Italian who escaped from Milliken's Bend when the lynching took place at Tallulah, through fear lest he should also be lynched, informed this consulate that he desired to return to Milliken's Bend in order to settle up his affairs, and asked that the authorities

10 U.S. Congress, 66th, 2nd sess., House Report 1027, (May 22, 1920) page 17.

would guarantee his personal safety. I, consequently, addressed the governor of the state; Governor Foster wrote to the sheriff at Tallulah, and handed me the sheriff's reply, a copy of which I have the honor herewith to disclose. I likewise sent a copy to Defina, as appears from a letter from him, which I have the honor to submit to your Excellency, begging that it may be returned to me. In this letter Defina points out that his life is not sufficiently guaranteed by a piece of paper, and states he deserves the right to claim indemnity."[11]

One also finds that Germans were lynched in 1918 as a result of war sentiment.[12] Mexico insulted American officials and threatened boycott of U.S. goods as a result of the lynchings perpetrated upon her citizens in the United States.[13]

Of all the lynchings just described it becomes a pertinent question as to how many of the lynchers were apprehended and punished. "Only about 8/10 of 1% of the lynchings in the United States since 1900 have been followed by conviction of the lynchers".[14] Lynchers were punished in only two of the cases in 1918 and 1919.

11 U.S. Congress. Senate. Message from the President of the U.S. Transmitting a report of the Secy. of State relating to the claims of Giuseppe Defina, and relating to the lynchings of certain Italian subjects at Tallulah, La., Jan. 29, 1901, 57th Cong., 1st sess., Senate Document 95 (1902) 4 pp.

12 Editors, "Lynching: An American Kultur", New Republic, Vol. XIV, page 311 (April 13, 1918).

13 Editors, "A Mexican Boycott", Independent, Vol. LXIX, p 1111 (Nov. 17, 1910).

14 J. H. Chadbourn, Lynching and the Law, (1933) p. 3.

> The only convictions noted were those of fifteen men sentenced to from fourteen months to six years for attempting to break into the jail at Winston-Salem, North Carolina for the purpose of lynching Russel High, a Negro; and the fining of twelve men who pleaded guilty in court to the lynching of Frank Foukal, a white man, at Bay Minette, Alabama. The men pleaded guilty by agreement and the fines ranged from $100 to $300.[15]

From the appalling record just presented it is easy to understand why the proponents of the Dyer Bill thought there was a need for that particular piece of legislation at that particular time. May the writer end this part of the chapter with the following quotation:

> So long as lynchings are tolerated all the teachings from all the pulpits of all the churches are rank hypocrisy. The colored man shared equally the burdens and responsibilities of citizenship in the World War just won, and he should be guaranteed in practice as well as in print the equal protection of the laws.[16]

15 U.S. Congress, 66th, 2nd sess., House Report 1027, (May 22, 1920) page 17.

16 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 548.

Opponents of the Bill

The Southern Congressmen lost little time in finding fault with the figures presented by the opposition. For example, Representative Sumners of Texas remarked:

> I received the other day a statement from the Tuskegee Institute. The gentleman who has just taken his seat quoted practically all of his statistics and gave practically all his information from that source. Under the date of Dec. 31, 1921, they sent out broadcasts, with release for publication dated Jan. 1, "The Lynch Record for 1921", from which I quote, "There were 63 persons lynched in 1921. Of those 62 were in the South and one in the North!" I do not know how I happened to clip this out, but the Washington Post of July 16, 1921 carried a statement under these headlines, which I quote: "Three Negroes hanged by a mob in Duluth; 5000 seize prisoners at police headquarters; troops ordered out. Attack on young white girl rouses crowds' fury". These Negroes were connected with a circus grounds and ravished her. This Duluth, Minnesota mob hung them all to a telephone pole in the middle of the city. Three at once in one place. And yet we are told that only one person was lynched in the entire North during all of the year 1921.[17]

Here one finds the proponents of the Bill accused of falsification in their figures.

A different attack was made upon the question of the need for the Dyer Bill by Rep. Byrnes of South Carolina. He demonstrated that lynching had steadily decreased from 1889 to 1918 intimating that if things were left to themselves lynching would disappear of its own

[17] Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 797.

accord. Mr. Byrnes' analysis is submitted:

Lynching Has Steadily Decreased From 1889-1918.[18]

Years	Total No.	% Decrease
1889-1893	839	
1894-1898	774	7.8
1899-1903	545	35.2
1904-1908	381	54.6
1909-1913	362	57.2
1914-1918	325	61.3

It was contended that the problem was not so great after all.[19]

Congressman Buchanan claimed that the law already took care of the lynching problem anyway. He argued that there was in existence a federal statute (U.S. Statute 5508) under which lynching was already defined sufficiently. He contended that if this statute was not enforced the Dyer Bill would likewise be unenforced. U.S. Statute 5508 reads:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the U.S., or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of

18 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 544.

19 The reader will undoubtedly notice, however, 325 lynchings for a four year period (1914-1918) was still a tremendous figure.

> any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office or place of honor, profit, or trust created by the United States.[20]

It can be seen that while the arguments of the opposition were not as lengthy as those of the Dyer group on the deplorable conditions of the status quo, the opposing arguments still merit considerable attention in that they present a direct clash on the first basic issue of the debates.

The writer is forced to conclude, however, that most of the figures presented by the proponents of the measure were incontrovertible on the part of the opposition as there was very, very, little said by the latter on this point throughout the debates. As the reader will see later, most of their contentions were based on other issues.[21]

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[20] Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 464.

[21] Particularly noticeable was the paucity of the opposition's counter-statistics. Evidently such statistics were not available--emphasizing still more the one-sidedness of the case on this issue.

CHAPTER IV

OTHER SIGNIFICANT ISSUES

THE EFFICIENCY OF STATE LAW ENFORCEMENT

Proponents of the Bill

It is appropriate at this time to inquire whether the states had any laws that definitely defined lynching, and, if so, how strictly were these laws enforced. Of course the appalling statistics already presented do somewhat imply the inefficiency of state enforcement. However, it is necessary to consider the matter of enforcement more specifically at this point in the argument.

Naturally, the proponents of the Dyer Bill contended that the states were inefficient. Well, what laws did the states have against lynching? Here are some of the many that prevailed to a greater or less degree in scattered form throughout the Southern states. There have been laws (1) making lynching and mob violence statutory crimes (2) fining the counties and, or cities where lynching took place (3) removing peace officers who did not perform their duty in lynch cases (4) punishing those who refused to aid an officer in protecting his prisoner from lynchers (5) punishing

violaters of safety zones established by officers (6) punishing officers who failed to prosecute lynchers (7) punishing those who refused to testify in a lynching investigation (8) punishing those who published a printed picture portraying a lynching (9) punishing those who failed to call a special term of court. When classified generally, laws to prevent lynching have fallen into four types, (1) use of military force to guard a threatened person (2) changing the venue of his trial (3) calling a special term of court to try him (4) and removing the prisoner to the prison of another county.[1]

The state of South Carolina had an excellent anti-lynching law, notwithstanding which, one hundred seventeen Negroes and three white men were lynched in that state in the thirty years from 1899-1918.[2] We see, therefore, that the laws were numerous in type and in this one instance excellent, and yet poor enforcement resulted in failure. In many states the state authorities had almost wholly failed to prevent or punish. "The newspapers of New Orleans and Jackson advertised in large

[1] J. H. Chadbourn, Lynching and the Law, (1933) page 25.

[2] U. S. Congress, 66th, 2nd sess., H. Rept. 1027 (May 22, 1920) page 2.

red type one lynching that was to take place".[3] Yet nothing was done to prevent it. The governor of Mississippi said he was powerless to prevent one certain lynching. Seven out of the ten states that had statutory definitions of lynching or mob violence had had lynchings since the respective enactments.[4] Governor Rye of Tennessee in one case involving a lynching openly confessed his impotence,

> I deplore this murder (that of Jim McIlheron of Estill Springs). I could not anticipate that local officers, whose duty it is to take custody of prisoners, would fail to accord protection nor could any action on my part be taken without being requested so to do by the local police authorities or court officers.[5]

It is enlightening to take cognizance of a slightly different phase of the present issue also. The federal government got nowhere through the state as an agent in the few cases where the federal government had sought state cooperation to apprehend the lynchers of foreigners. Secretary of State, John Hay, brought this out very clearly. He described a case in which the governor of Louisiana, at Hay's request, tried to bring lynchers to justice. The Federal Government carefully

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[3] Ibid.

[4] J. H. Chadbourn, Lynching and the Law, (1933) page 29.

[5] U. S. Congress, 66th, 2nd sess., House Rept. 1027 (May 22, 1920) page 17.

investigated; then three local grand juries successively investigated with what result? No one was brought to justice.[6]

6 U. S. Congress. Senate. Message from the Pres. of the U.S. transmitting a Report from the Secy. of State relating to the Lynching of two Italian Subjects at Tallulah, La., July 20, 1899, 56th Cong., 2nd sess., S. Doc. 125 (1901) 2 pp.

Opponents of the Bill

The only direct answer of any consequence made throughout the debates to the opposition on this issue was made by Representative Tillman who protested loudly against making lynching a national issue. He felt that since the New England states had obliterated witch-burning without Federal interference, the South could do likewise with the lynching problem.[7] His plea may be expressed in the modern vernacular as, "Give us time".[8] The writer is sorry that more information cannot be recorded here on the part of the opponents of the Dyer Bill, but one cannot present anymore than they presented. Lest the reader begin to wonder whether or not this is a one sided series of debates, let the writer warn him to the contrary. The opponents of the Bill simply based their attack on other issues.

7 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1013.

8 May I say, however, that Mass. stopped the execution of witches long before the South even thought seriously about stopping lynching.

EQUALITY OR INEQUALITY

Proponents of the Bill

Representative Dyer and his colleagues voiced as one of their principal arguments the basic American ideal, "Equal Justice Under Law". In Chapter I, it has been demonstrated how carefully they built their case on this issue. One will recall that they stressed the point of discrimination against the Negro in the light of his fine service during the World War. It should not be necessary, therefore, to repeat that evidence. Suffice it to recall that this argument has already been expressed on the part of the proponents of the Bill. One should also stress, however, that the proponents of the measure did use the thirteenth, fourteenth and fifteenth amendments to illustrate the importance of equality of justice. An exact quotation of the fourteenth amendment can leave no doubt in anyone's mind on this point:

> Section I. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.[9]

[9] Constitution of the United States, 14th Amendment, Section I.

Opponents of the Bill

Practically the entire answer of the opposition can be found in this concept: "If the Negro keeps his place, he is well treated; he deserves no social equality".[10] One of the opponents of the Bill went so far as to blame the North for the lynchings because the North preached too much equality. The reader cannot fully appreciate Representative Buchanan's viewpoint without analyzing a direct statement made by the Texan during the debates,

> The Negro problem is the peculiar problem of the South. It would long ago have been solved in the best interests of both races but for the political partisan spirit of the Republican machine and the so-called white uplift organizations of the North and East who send their disturbing emissaries into the Southern states and in secret meetings of the Negro race preach the damnable doctrine of social equality which excites the criminal sensualities of the criminal element of the Negro race and directly incites the crime of rape upon white women. Lynching follows as swift as lightning, and all the statutes of State and Nation cannot stop it.[11]

10 Congressional Record, 66th Cong., 2nd sess., (May 25--June 5, 1921) page 8030.

11 Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 468.

To demonstrate even more clearly the southern point of view--and essentially the attitude of most of the opponents of the Dyer Bill (for most of them were Southerners), listen to this. From Representative Tillman came these sagacious utterances, "Where the Anglo-Saxon plants his foot, he becomes a conqueror".---"A race of tip-takers cannot become a race of rulers".[12] Sumners of Texas went still further:

> That day never will come--there is no necessity for anybody mistaking it--that day never will come when the black man and the white man will stand upon a plane of social equality in this country, and that day never will come in any section of the United States when you will put a black man in office above the white man---
>
> I do not know why and you do not know either, but there is nobody up there in Yankeedom or down in my country that can obliterate those lines of racial distinction. God Almighty drew them in the councils of His infinite wisdom, and put the instinct of racial preservation there to protect them. You ask me what we will do to protect it. We will do whatever is necessary, that is all. Men who do not live in the presence of the danger do not hear the call (applause). Nature does not waste her energies. When men respond to that call, they respond to a law that is higher than self preservation. It is the call to the preservation of the race. When men answer to that call you cannot reason with them. That law knows no reason. You cannot appeal to their sense of justice. It knows no sense of justice. It is a blind, unyielding, uncompromising, all-sacrificing purpose of the dominant race to control the situation. When that call comes every man who is not a racial degenerate has to answer it. (Applause).[13]

[12] Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1014.

[13] Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 799.

And finally one finds Representative Buchanan of Texas intimating that the Anti-Lynching Bill is an affront to God Himself.

> And no sagacious attempt will try to efface the lines of demarcation or to tear down the standards set by the hand of God to indicate and maintain this limitation of racial integrity. The most cursory glance can see that natural law is beyond the repeal of any human power. No one has ever beheld a vulture and an eagle in close companionship or in the mutual exchanges of a common feeding ground. The hooting owl has never blended its sepulchral call with the mount-song of the nightingale. The leopards' spots still bask in the depths of the jungle, and the skin of the Ethiopian is unchanged within the ages of man. The lion and the lamb have not yet realized the millenial prospectus. Then why should anyone indulge the hope, much less the attempt to countermand or controvert the eternal decrees by an effort to obliterate the racial distinction fixed by creation, or contradict by any human law the fixed antagonism established by God Himself.[14]

The position taken by the average speaker of the opposition on the question of equality is unequivocably summarized by this final blast from Mr. Buchanan:

> Coming down, Mr. Chairman, to the spiritual merit of this Dyer Bill and its kindred and associate measures, which constitute the summum malum of the entire dastardly budget of unpatriotic wickedness leveled so unscrupulously at the heart of the Nation, the astounding fact is that such a practically impossible proposition can even have a day in court.[15]

The author will leave to the judgment of the reader the "merits" of the case just presented.

14 Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 459.

15 Ibid., page 467.

CHAPTER V

CONSTITUTIONALITY

Proponents of the Bill

One now arrives at the issue which, if one judges by the space accorded it in the debates, was the main issue of the entire controversy. The writer refers to the constitutionality of the proposed legislation. Here the Dyer group prepared an elaborate case, and the opposition, an equally elaborate answer.

The primary ground upon which constitutionality was based centered in the 14th amendment. Although previously cited it behooves one to repeat its relevant provisions at this time:

> Section I
> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
> Section 5
> The Congress shall have power to enforce by appropriate legislation the provisions of this article.[1]

[1] Congressional Record, 66th Cong., 3rd sess., (Jan. 21, 1921) page 1840.

The first attack of the Dyerites upon the problem was that the equal protection of the laws might be denied just as much by state inaction as by state action. This argument declares, in effect, that the state "acts", within the meaning of the 14th amendment, whenever "its officers, with the silent approval of the whole people, refuse to its citizens the protection which the Constitution and laws give them". This is the argument of Moorfield Storey, one of the greatest constitutional authorities of the day.[2]

Assistant Attorney-General Goff declared that "Forbidding the state to deny equal protection is equivalent to requiring the state to provide it".[3] He cited the case of Maxwell vs Dow (176 U. S., 581) where Justice Harlan delivered one of his famous dissenting opinions---"But does the state not violate and render meaningless the provisions of the amendment by neglecting to legislate, refusing to enforce its laws, or by allowing its laws and its officials

2 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1018.

3 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 796.

to drift into a condition of utter helplessness and indifference".[4]

Attorney-General Daugherty affirms even more strongly that inaction is denial of the equal protection of the laws when he says,

> To my mind there can be no doubt that negativity on the part of the state may be, as well as any act of a positive nature by such state, a denial of the equal protection of the laws and thus be within the prohibition of the 14th amendment so as to give Congress power to act with reference to it. That such was in the mind of the court when pronouncing the decisions above cited is clearly shown by the following excerpt from the opinion of the court speaking through Mr. Justice Bradley in the Civil Rights Cases---:
>
> "In other words, it (14th amendment) steps into the domain of local jurisprudence and lays down rules for the conduct of individuals in society toward each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the state or its authorities."[5]

Concerning the question of the 14th amendment and whether or not the action or inaction of a state can be penalized by the Federal Government under it the final statement of Attorney-General Daugherty is presented.

My examination of the proposed legislation causes

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4 U. S. Congress, 67th, 1st sess., House Report 452 (Oct. 31, 1921) page 13.

5 U. S. Congress, 67th, 1st sess., House Report 452 (Oct. 31, 1921) page 16.

> me to believe that all of its provisions are predicated upon some action--either negative or positive--upon the part of the states and that therefore the same is wholly within the competency of Congress to enact.[6]

The next phase of the 14th amendment to be discussed may be stated as follows: If either the inaction or the action of a state fails to provide the equal protection of the laws, may the Federal Government provide that protection? Says Justice Storey, "In my judgment inaction by the states makes action by the United States imperative".[7]

It might appear here that if, according to the Dyer group, Congress already had the power (as shown by the citing of Storey) to enforce the Constitution when the states failed--then to propose a bill of the Dyer type would be merely to duplicate existing law. However, this was not the case. The Dyer Bill was a specific application of a general constitutional principle and was therefore considered necessary.

The author must say at this juncture that the Bill's proponents had only one case that really came right out and said specifically what they contended, namely, that

[6] Ibid., page 17.

[7] Congressional Record, 67th Cong., 2nd sess., (Jan. 16, 1922) page 1018.

Congress could supply equal protection when the states failed to do so. Consider Ex parte Virginia (100 U. S. 339) which reads: "Where a State by its laws or by the acts of its officials does not give to its citizens the equal protection of the laws Congress has the right to pass legislation giving to such citizens the protection guaranteed by the 14th amendment".[8] Although the case just given was the only case right on the point, other cases that indirectly came to the same conclusion shall be presented in the next phase of the 14th amendment upon which the basis for constitutionality hinged.

The phase in hand may also be stated in the form of a question. If Congress can enforce the equal protection of the laws when the states fail to do so, can Congress also punish the instrumentalities of the state to whom the above lack of enforcement may be attributed? Of course the Dyer group said, "Yes, Congress can punish these delinquent instrumentalities." To argue otherwise they claimed was most absurd. "In nearly all cases of lynching, the person put to death is taken by a mob from the sheriff, marshal, or other

8 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 547.

police officer of the state, whose failure to defend and protect him denies to him the equal protection of the laws".[9] Thus if the officers cannot be punished by the Federal Government then the Federal Government is impotent to enforce its own laws.

In the case of Virginia vs. Rives the Supreme Court declared that Congress, by virtue of the 5th section of the 14th amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive, or the judicial department of the state. The mode of enforcement is left to its discretion.

In the case of Strauder vs. West Virginia (100 U. S. 303, 306, 310) the Supreme Court specifically declared: "A state acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision therefore must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws."

Again the case of Ex parte Virginia (100 U. S. 339, 346) was cited

9 U. S. Congress, 56th, 2nd sess., House Report 1027 (May 22, 1920) page 2

> Whoever by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition.[10]

Justice Field in a dissenting opinion described the existence of a new line of decisions that give Congress the power to interfere in the state governments to safeguard Constitutional rights. Field said that this new line of cases allowed the Federal Government the power to subject a judicial officer of a state to punishment for the manner in which he discharged his duties under her laws.[11]

The case of Ex Parte Clark is also relevant. Here the court held:

> The principal question is whether Congress had constitutional power to enact a law for punishing a State officer of election for the violation of his duty under a State statute in reference to an election of a Representative to Congress. Our opinion is that Congress had constitutional powers to enact the law.[12]

May the writer conclude with the following excerpt from Attorney-General Daugherty:

10 U. S. Congress, 66th, 2nd sess., House Report 1027 (May 22, 1921) page 3.

11 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1027.

12 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1027.

> While the question whether the United States may penalize an instrumentality of a political subdivision of a state may cause some doubt, it is at least an open one so far as decisions of the Supreme Court are concerned.[13]

A second primary basis for the argument of constitutionality may be found in Article I, Section 8, of the Constitution which gives Congress the power to suppress insurrections. Our courts have construed insurrections to include mobs and riotous assemblages. Under the two provisions quoted there can be little doubt concerning the power of Congress to define and punish the crime of lynching, according to the Dyer group.

A third basis for constitutionality was the duty of protecting foreigners. "In Missouri vs. Holland (252 U. S. 416) the court has upheld the power of Congress to enact laws necessary and appropriate to the effectuating of treaties." Surely treaties include the protection of national from other countries.[14] Here Representative Dyer shifted his tactics and instead of producing only cases to prove the constitutionality of his measure, he had to argue that his Bill ought to be declared constitutional if it ever appeared before the Court. Perhaps he was forced into this position by virtue of a precedent of Federal admissions to foreign nations of

13 U. S. Congress, 67th, 1st sess., House Report 452 (Oct. 31, 1921) page 17.

14 Ibid.

the National Government's impotence to punish lynchers in the states. Dyer declared that nothing is more absurd and self-degrading than for a government to admit that it doesn't have the power to enforce the provisions of its own constitution. The Constitution of the United States definitely provides that no person shall be deprived of life, liberty, or property without due process of law. Yet the Federal Government has on many occasions admitted to France, Spain, China, Italy, and Great Britain that it could not enforce the above constitutional provisions if the states refused to do so.

The United States Government has paid $792,499.39 to other governments as indemnities for the lynching of the latter's citizens. There were at the time Dyer spoke, unadjusted claims involving lynched Australians, Greeks, Japanese, and Italians. In every letter concerning these claims, our government sent, according to Dyer, a reply that affirmed the impotence of the Federal Government, and blamed the states in which the crime occurred.

On the basis of such miscarriage of justice and on the basis of such a bad impression as this type of action leaves on the foreign powers, the Dyer group felt that certainly the Anti-Lynching Bill ought to

be declared constitutional if ever brought before the court in a test case.

Concerning the first seven sections of the Bill, it was the opinion of Colonel Goff, Assistant Attorney-General, that these were unquestionably constitutional because they were in effect but elaborations of existing law.

Other authorities were quoted by the Dyer group in favor of the constitutionality of the Bill. Among these were ex-Attorney-General Moody and the majority of the Committee on the Judiciary, the lawyers committee of the House.[15]

The conclusion to all this discussion of constitutionality may well be supplied by Mr. Little who remarked that any new proposition introduced in Congress was always followed by several constitutional lawyers claiming its unconstitutionality. However, he reminded Congress that to date only thirty-five out of the thousands of new Congressional Bills had been so declared.[16] Besides, as Representative Ansorge brought out, if the Dyer Bill is unconstitutional

15 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1016.

16 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1025.

there is sufficient emergency to warrant amending the Constitution. Nevertheless, there is no reason for attempting the latter unless the Supreme Court rendered a decision of unconstitutionality, for amendment is most certainly a slow and tedious process.[17]

17 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 547.

Opponents of the Bill

Again, one must consider constitutionality on the basis of the 14th amendment and states rights. However, this time one should look at the other side. Here there exists a formidable array of authorities and cases. Once more it is appropriate to analyze the 14th amendment from the standpoint of whether action and inaction are both denial of the equal protection of the laws within the meaning of the amendment.

Judge Bradley in the Civil Rights Case which came up under an enactment of Congress providing all persons within the United States shall have equal privileges in hotels, public conveyances, places of public amusement, regardless of race or color or previous conditions of servitude said in holding that statute unconstitutional. "It [the legislative power] does not authorize Congress to create a code of municipal law for the regulation of private rights, but to provide the modes of redress against the operation of state laws".[18]

18 Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 465.

The last sentence refers to positive state action only.

James G. Blaine in his book, Twenty Years in Congress made plain what Congress meant when it enacted the 14th amendment. The latter "curtails the power of the states to shelter the wrongdoer or to authorize crime by statute".[19] This statement once more demonstrates the principle that a state's positive action by statute must seek to deprive persons of equal protection of the law before the 14th amendment is violated. Again it is implied that negative action of a state's officer in failing to protect a person from unequal protection is not a violation of the 14th amendment.

Again the case of Pembina Mining Company vs. Pennsylvania (125 U. S. Reports, page 181) states that:

> The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminatory and hostile legislation.[20]

Here again one sees the idea expressed of discrimination through a positive legislative act. Mr.

19 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1023.

20 Ibid.

Justice Field in the case of Barbier vs. Connolly (113 U. S. Reports, page 27) reiterated the same principle. Representative Collins added a devastating blow to Representative Dyer's case. Collins disclosed that Congress really knew at the time of adoption that the 14th amendment applied only to state action because Congress voted down an amendment that would enable the Federal Government to act as the Dyer Bill provides. Again in the United States vs. Harris (106 West) Justice Wood, in rendering the opinion of the court said:

> It, the 14th amendment, is a guarantee against the acts of the state government itself; it is a guarantee against the exercise of arbitrary and unconstitutional power on the part of the government and legislation of the State, not a guarantee against the commission of individual offenses; and the power of Congress, whether expressed or implied, to legislate for the enforcement of such a guarantee does not extend to the passage of laws for the suppressing of crime within the States. The enforcement of the guarantee does not require or authorize Congress to perform the duty that guarantee itself supposes it to be the duty of the state to perform.[21]

Once again the writer approaches the second phase of the 14th amendment by asking this question. If state action or inaction is construed as denial of

21 Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 465.

the equal protection of the laws, may the Federal Government supply that protection? The answer of the anti-Dyerites was, No!

The Civil Rights Cases (109 U. S. 3) demonstrate quite clearly that the Federal Government cannot intervene if the states fail to provide equal protection of the laws. "It is absurd to affirm---that because the denial by a state to any person of the equal protection of the laws is prohibited by the amendment (14th), therefore, Congress may establish laws for their equal protection."[22] Viscount Bryce understood the principle of non-interference with state police power to be as stated above. He very clearly defines it in the following excerpt:

> What then, the European reader may ask, is the National government without the power and the duty of correcting the social and political evils which it may find to exist in a particular state and which a vast majority of the Nation may condemn? Suppose widespread brigandage to exist in one of the states, endangering life and property. Suppose contracts to be habitually broken and no redress to be obtainable in the State Courts. Suppose the police to be in league with the assassins. Suppose the most mischievous laws to be enacted, laws, for instance, which recognize polygamy, leave homicide unpunished, drive away capital by imposing on it an intolerable load of taxation. Is the Nation obliged to stand by with folded arms while it sees a meritorious minor-

22 Congressional Record, 67th Cong., 2nd sess., (Jan. 12, 1922) page 1135.

> ity oppressed, the prosperity of the state ruined, a pernicious example set to other states? Is it to be debarred from using its supreme authority to rectify these mischiefs? The answer is, Yes---The State must go its way with whatever injury to private rights and common interests its folly or perversity may cause.[23]

> In the case of Keller vs. United States (213 U. S. 138) the Supreme Court held that the Federal Government has no police power and that the police power is reserved to the states, which alone could punish a person keeping a house of ill-fame in a State, even when the female inmates are aliens and in this country less than three years. The court approved a-gain of Judge Cooley's statement that the power to establish the ordinary police regulations [i.e., suppressing crime and violence], has been left with the individual states and can-not be assumed by the National Government.[24]

In the case of Newberry vs. the United States (May 2, 1921) the Supreme Court said Congress could not regulate primary elections in the state for United States Senator. The court emphasized that since the state has inherent police power, it may suppress whatever evils occur in connection with primary or convention.[25]

23 Ibid., page 1137.

24 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 550.

25 Ibid.

Particularly important here is, of course, the allusion to police power. In (92 U. S. 555) it was held that "the provision of the 14th amendment forbidding any state to deny any person within its jurisdiction the equal protection of the laws gave Congress no greater powers".[26] In the Slaughter-house Case just three years after the 14th amendment was passed the court said it was convinced that the amendment did not intend that Congress could interfere with state police power. Mr. Parrish of Texas introduced an article by the Honorable S. C. Padelford of Texas, an authority on the Constitution, to the effect that the power to penalize a state is the power to destroy it.

Representative Buchanan of Texas darkly pictured the possible effect upon the states if the Federal Government could enforce the United States Constitution in any state that seemed unwilling to enforce any one of its provisions:

> Congress would have the constitutional authority to declare that if any state or governmental subdivision thereof fails, neglects, or

26 Congressional Record, 67th Cong., 2nd sess., (Jan. 12, 1922) page 1137.

> refuses to provide and maintain protection to the life, property, or the pursuit and acquisition of happiness of any person within its jurisdiction against the unlawful and criminal acts of any person or band of persons contrary to the laws of such state, then such state, by reason of such failure, neglect, or refusal to provide this lawful protection, shall be deemed to have denied to the injured persons aforesaid the equal protection of the laws of said State, or said state shall be deemed to have deprived such injured persons of "life, liberty, or property without due process of law", and to the end that such protection as is guaranteed to the citizens of the United States by its Constitution may be secured as it provided, then Congress would have as much right and constitutional warrant to provide an entire penal code for all offenses committed by any and all citizens of every state in the Union against the penal law of a state and the enacted penal code of Congress, and thus usurp all the reserved powers of the state over their strictly internal affairs, destroying our system of government and reducing the states to a condition of vassalage or provinces, the same status they occupied prior to the Revolutionary War, when they were dependent colonies of England.
>
> It is useless for me to state that a revolution would follow if Congress thus followed the principles contained in this bill to their logical conclusion. This, gentlemen, is not a mere picture of my imagination.[27]

Justice Strong in the case of Virginia vs. Rives (100 U. S. 313) said, "These provisions of the 14th amendment have reference <u>to state action exclusively, and not to any action of private individuals</u>."[28] Here, again, the idea is definitely

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27 <u>Congressional Record,</u> 67th Cong., 2nd sess., (Dec. 17, 1921) page 466.

28 <u>Congressional Record</u>, 67th Cong., 2nd sess., (Dec. 19, 1921) page 553.

expressed that the state must act positively to deprive a person of the equal protection of the laws.

A special attack was made upon the case of Ex Parte Virginia inasmuch as it was the chief case upon which the Dyer group relied to prove that Congress could interfere when state police power failed to provide equal protection of the laws. Mr. McSwain maintained in the debates that:

> The one case (Ex parte Virginia) relied on by the proponents of the Bill, when properly understood is not out of harmony with the great current of decisions. The case was decided upon the mere averments of an indictment which alleged that J. D. Coles as county judge was legally charged with the duty of selecting grand and petit jurors and that he excluded from the jury list certain citizens possessing all qualifications as jurors prescribed by law and such exclusion was because of the race, color, or previous condition of servitude of the persons so excluded. Here it was admitted, for the argument, that the state's officers excluded all of a certain class, to wit, all Negroes, from the jury lists upon the sole ground that they were Negroes. Such action was class discrimination. All Negroes were purposely excluded because of race and color, and not an occasional Negro excluded for real or fanciful reasons of personal unfitness. Such consistent exclusion of Negroes amounted to a rule of action; the result was that the law of Virginia denied to Negroes the right of sitting on juries, and such class discrimination was manifest denial of the equal protection of the law.
>
> So to make direct application of the true doctrine of the case if it could fairly be charged that in any state all Negro prisoners charged

> with murder, arson or rape are lynched then the case might be authority for certain legislation. But, in fact, persons both black and white are lynched in all parts of the country; but wherever done the lynching is not against a class or race or sect.[29]

And now it is necessary to present a detailed account of the case comming closest to the present Bill, for here the opponents of the Bill really centered their attack on constitutionality as it involved the 14th amendment and states' rights. The reader will please follow every detail very carefully that he may come to a just conclusion on the issue at stake.

> ---the case which perhaps comes the nearest to the question now under consideration is that of United States vs. Harris (106 U. S., page 629) decided October, 1882.
>
> In that case Harris and others were indicted under section 5519, Revised Statutes, (1) for conspiring to deprive certain persons of the equal protection of the laws of the United States and of the state of Tennessee by beating, bruising, and so forth, those persons while uner arrest and in the custody of a deputy sheriff of Crockett county. (2) The defendents by demurrer put squarely in issue the constitutionality of section 5519, Revised Statutes, which reads as follows: Section 5519. "If two or more persons in any state or territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving either directly or

29 Ibid., page 551.

indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the laws; each of such persons shall be punished by a fine---."

The judges of the circuit court were divided in opinion and the question of constitutionality was referred to the Supreme Court.

The Supreme Court held the section unconstitutional, deciding--

(1) That the statute could be passed; if at all, only under the 14th amendment.

(2) That the 14th amendment contains a guarantee of protection against the acts of the state government itself and adopting and quoting the language of the court in United States vs. Cruikshank (92 U. S., 542) as follows: "The 14th amendment prohibits a state from denying to any person within its jurisdiction the equal protection of the laws. ---That duty was originally assumed by the states, and it still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment guarantees but no more. The power of the national government is limited to the enforcement of this guarantee."

The language of the amendment does not leave this subject in doubt. When the state has been guilty of no violation of its provision; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; when no one of its departments has deprived any one jurisdiction of the equal protection of the laws; when on the contrary the laws of the states as enacted by the legislative and construed by its judicial and administered by its executive departments recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress.

> Section 5519 is not limited to take effect only in case the state shall abridge the priveleges or immunities of citizens of the United States or deprive any person of life, liberty, or property without due process of law, or deny to any person the equal protection of the laws. It applies, no matter how well the state may have performed its duty.
>
> Under it private persons are liable to punishment for conspiring to deprive anyone of the equal protection of the laws enacted by the state.
>
> As therefore the section of the law, under consideration is directed exclusively against the action of private persons without reference to the laws of the state or their administration by her officers, we are clear in the opinion that it is not warranted by any clause in the 14th amendment to the Constitution.[30]

The third phase of the 14th amendment discussed by the Bill's proponents shall now be analyzed by its opponents. The reference here is to the power of Congress to punish an instrumentality of a state, whether it be an officer or a political subdivision. The first case introduced is based upon the point of the phase of the 14th amendment just described.

> The attempt to penalize a county in which lynching occurs is clearly destructive of our federal system. It has been held from the great decision in McCullough vs. Maryland (4 Wheat., 316) decided 1819, that neither State or Federal Government can impose any duty or obligation upon each other because the power to burden or control involves the power to destroy. Now the county is the creature and agency of the state and it is immune from suit or liability, just as the state is, except as the state by statute has made the county liable and sueable. Therefore, if the Federal Government

30 Congressional Record, 66th Cong., 3rd sess., (Jan. 21, 1921) page 1840.

> can impose a penalty upon a county, then it could also penalize a state. If it could make a county liable for a $10,000 penalty, it could impose a $10,000,000 penalty upon a state. Thus a state could be destroyed and all her agencies paralyzed.[31]

Note the following decisions by the Supreme Court:

> If a state officer hands a prisoner to a mob, he violates a state law and his act is not the act of the state, but is contrary to the state's laws. He is subject to penalty only by the state. Barney vs. State of New York (193 U. S., 430).
>
> In the case of United States vs. Thompson et al. decided Jan. 3, 1922, the court held that the United States Government was not liable for the torts of an agent. By the same reasoning neither can the acts of a law breaker be regarded as the acts of a state.[32]
>
> In the Burney case, (193 U. S.) the Supreme Court held that the act of a subordinate officer done in violation of the law was not the act of the state within the meaning of the 14th amendment.[33]

Mr. Caraway in his minority report on the Dyer Bill added to the preceding points by declaring that if Congress could force a county to respond in dam-

31 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 549.

32 Congressional Record, 67th Cong., 2nd sess., (Jan. 12, 1922) page 1138.

33 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 805.

ages it could do likewise to a state. His logic is that a county is but a subdivision of a state, a quasi-corporation to aid the state government, a mere instrumentality of the state. Therefore, to force the county is to force the state to pay an indemnity. Caraway asserts that the latter is unconstitutional; hence, the former must be.[34]

The reader will recall that in the preceding section of this chapter we considered the lynching of foreigners and its effect on the constitutionality of the Bill. The only mention made of this element was the presentation of evidence to prove it would favorably affect constitutionality. Here the opponents of the Bill made an admission unfavorable to one phase of their case in order to support another. They disclosed that Chief Justice Taft stated a Federal law against lynching aliens would be constitutional, but that a similar law against lynching our own citizens would be unconstitutional on the ground that it was entirely a state matter.

A final barrage of blows was dealt the consti-

34 U. S. Congress, 66th, 2nd sess., House Report 1027, Part 2 (May 29, 1920) page 2.

tutionality of the Bill by the very able Mr. Hersey of Maine. The blows were aimed at some of the foremost authorities quoted by the proponents of the measure. Mr. Hersey began by reaffirming his staunchness as a Republican, but concluded:

> No man who has sworn to support the Constitution can conscientiously vote for what he understands to be an unconstitutional measure, however expedient he may think it.[35]

Mr. Hersey then began his attack. First to feel its effects were Mr. Dyer and Mr. Volstead, the two most ardent proponents of constitutionality. Said Mr. Hersey,

> When the code to enforce the 18th amendment was before the Supreme Court, my chairman, Mr. Volstead, was for the law and its constitutionality, because, as he claimed, he was backed by the 18th amendment.
>
> On the other side then was my friend from Missouri (Mr. Dyer), author of this Bill, who was opposed to the national prohibitory law on the ground that it was not constitutional and that Congress had no right to enact it. Now, when this Bill comes before the Supreme Court, there is a wonderful change. On the day that the Constitution is to be crucified by the anti-lynching Bill, Pilate and Herod become friends. The gentleman from Missouri and the gentleman from Minnesota are now claiming that this law, this anti-lynching Bill, is constitutional without any constitutional amendment whatever.[36]

35 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1020.

36 Ibid., page 1023.

Here Mr. Hersey paused to interject adroitly the argument that: When opponents used the 18th amendment as a contention for the Dyer Bill's constitutionality, the argument reacted against them, for it showed that a statute could not enforce national prohibition constitutionally. Therefore, an amendment was necessary. Whereupon, Mr. Hersey returned to the attack upon authorities. The target this time was the Attorney-General and his aides. Said the gentleman from Maine,

> In the course of his testimony as set forth in the hearings, it seemed to me that the Attorney-General's office considered itself duty bound to support and recommend this bill as a party measure and advise its passage, because it was claimed by its author that it was so pledged by the Republican platform and recommended to Congress by the president.
>
> In other words, the Assistant Attorney-General argued his case for the proponents of the bill with all the skill and ingenuity of a paid attorney representing a certain client's interests. Every decision and authority cited was so arranged, colored, and quoted as to make out a prima facie case for the bill and to advise the committee in substance that even if its constitutionality was in doubt, it ought to be put up to the Supreme Court.[37]

The last of the proponent's authorities to receive a serious "black ball" was the Honorable Moor-

37 Ibid., page 1019

field Storey who, Mr. Hersey revealed, was really the attorney for the National Association for the Advancement of Colored People, and who, therefore, would naturally prejudice the case of constitutionality in the direction of the Dyerites.

In conclusion of the argument as presented by the opposition on the issue in point, Mr. McSwain summarized the sentiments of his colleagues when he remarked:

> If we violate the Constitution and thereby violate our oaths in order to punish citizens for lynching each other, then we become a mob determined to lynch the supreme law of the land itself.[38]

38 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 550.

CHAPTER VI

PRACTICALITY OF THE DYER BILL

Proponents of the Bill

Needless to say, the question of just how practical the Dyer Bill would be, if passed, was one of the vital issues of the day. No matter how fine or noble a purpose any legislation may have, the "common sense" American wants to know whether or not it is likely to work before he gives a plan his endorsement. This was possibly even more true in 1920 than it is in the present "Ham and Eggs" (California old age pension) era.

Attorney-General Daugherty was of the opinion that sections 12 and 13 of the Bill, which provided for the punishment of officials who failed in their duty to apprehend lynchers, really struck at the heart of the evil.[1]

The Tyler Times of Texas editorialized to the effect that the $10,000 penalty really put teeth in the Bill. The Spartanburg, South Carolina, Herald

[1] U. S. Congress, 67th, 1st sess., House Report 452 (Oct. 31, 1921) page 17.

was of a similar opinion.[2] Mr. Dyer made his point on the practicality of it when he remarked that provisions of this type were common in state legislation. He thought that the penalty would make every county citizen try to prevent lynching--if only the Federal Government had jurisdiction rather than the states.

A table appeared some years after the Dyer Bill had been fully debated that tended to bear out Mr. Dyer's claims. "The table shows that each county which has been fined has had no more lynchings, and that the average number of lynchings per year in the state has declined sharply after the infliction of each penalty."[3] The figures presented are from North Carolina where a state law similar to the federal law proposed by Dyer had been in effect for some time. In this isolated example of a state that really tried to enforce a measure similar to the Dyer Bill, results were satisfactory.

2 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1018.

3 J. H. Chadbourn, Lynching and the Law (1933) page 51.

FINING A CITY OR COUNTY STOPS LYNCHING

		No. of Lynchings Year of enforcement		No. next year	
Year	County	State	County	State	County
1913	Clarendon	2	1	4	0
1918	Barnwell	1	1	1	0
1921	Laurens	5	0	1	0
1924	Allendale	1	0	0	0
1926	Lexington	1	0	0	0
1930	Oconee	2	1	?	?

		Average no. of lynchings per year			
		Before		After	
Year	County	State	County	State	County
1913	Clarendon	3.5	0	1.2	0
1918	Barnwell	3	.12	1	
1921	Laurens	2.14	.095	1	0
1924	Allendale	2.48	.04	.5	0
1926	Lexington	2.33	.07	.5	0
1930	Oconee	2.16	0	?	?

4

It should be stated here, however, that the above type of statute seems to have been utilized far more frequently to penalize counties for damage to person and property in what are commonly called riots rather than lynchings.[5] The reader will see later the bearing of the distinction between riots and lynching as a controversy in the debates.

4 Ibid.

5 Ibid.

Meanwhile let us summarize the Dyer group's arguments on practicality as an attempt to show by authority and evidence that the Bill was merely a replica of North Carolina Law and that North Carolina law had succeeded on this subject.[6]

6 At first it might appear as if the Proponents of the Bill were contradicting the claims made in a previous chapter that state laws had failed to correct lynching. However, the reader must remember that North Carolina was the only successful state in stopping lynching and the Dyer Bill was a proposal to extend such law to the entire nation.

Opponents of the Bill

The attack of the opposition on this issue of practicality was a series of varied arguments. The first claim was that the Bill was too general. Representative Aswell wanted to know of one of the proponents of the measure what would happen if five robbers killed a business man in Washington while burglarizing his store. Would all district policemen be sent to prison? Aswell felt that such a result might well be possible under the bill in question.[7]

One must admit that the practicality of the Bill in the light of the above analysis might be questioned.

A second argument was as follows: When the Federal Government did have jurisdiction, it failed to use it to good advantage. A better example of this than any presented by the Congressmen occurred in 1931 after the present measure had been defeated. Note the following account:

> By eleven o'clock the mob had regained its morale. A government truck used for transporting

[7] Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 545.

> the troops, was burned and six guardsmen were injured by stones hurled at them. Mobbers dragged the burning truck from the jail door. A chain fastened to the battered door, was hitched to a truck and the door was jerked from its hinges.[8]

If the Federal Government was this inefficient would it be practical to assume it would be different under the proposed legislation?

Mr. Bankhead of Alabama brought forth a third attack on the practicality of the measure when he noted the fact that cases would still be tried by the nearest Federal court, which, after all, was usually composed of local judges who would react to Southern sentiment.[9]

A fourth contention was that the Bill was impractical because it failed to apply to race riots. Mr. Aswell feared that Northern cities could have all the riots they wished since Mr. Dyer and his Bill were silent on the subject of race riots.[10] Aswell thought, therefore, that the Bill was particularly unfair to the South where only lynchings and not race riots occurred.[11]

8 A. F. Raper, The Tragedy of Lynching (1930) page 371.

9 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 554.

10 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 545.

11 It should be noted here that Mr. Dyer replied that his Bill did include race riots.

The next argument ridicules the definition of "mob" as being utterly impractical. This contention is clearly expressed by Representative Aswell when he says:

> This bill provides that if you want to lynch a Negro, send four men--not five because five is a mob. (Laughter)[12]

It was further asserted that the South Carolina and Ohio laws on lynching had failed and that it was impractical, therefore, to have a federal anti-lynching law.[13]

Another argument was that the law was impractical in its effect on small counties. Representative Tillman of Arkansas made the point that a levy of $10,000 on a sparsely settled county would mean bankruptcy to its taxpayers. To show that his argument was no technicality, he mentioned Wyoming, Montana, and Nevada's counties. Lynchings had occurred in those states in connection with the development of the West.[14]

12 Ibid.

13 However, it can easily be seen that different agencies would be responsible for a federal than for a state law. Also a federal law would be uniform throughout the nation. It does not follow that if a state law fails, a national law will likewise fail.

14 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1010.

It was further added that even if the lynchers take the victim through a county at night without a single citizen knowing it, the county must respond in a fixed penalty of $10,000.[15] This is a sound argument in so far as it demonstrates the impracticality of trying to fit the Dyer Bill to all the possible circumstances likely to occur under it.

The opposition concluded the arguments on the practicality of the Bill by suggesting what it considered more fundamental attacks upon the problem of lynching. Mr. Watkins of Louisiana proposed that all criminal cases be tried rapidly where lynching was threatened or might be a possibility. He asked for swift and sure punishment in such cases while the accused received every safeguard during the trial. He argued that a trial and punishment as rapid as a military court martial would prevent most lynchings before they could occur and would thus be far more practical than any curative measure of the nature of the one in question.[16]

Representative Aswell had another suggestion to make. He declared that if there must be Federal

15 Ibid., page 1011.

16 Congressional Record, 66th Cong., 2nd sess., (May 25-June 5, 1920) page 8030.

control of the problem as the Dyerites proclaimed, then the best proposition would be a bill providing that a woman who has been attacked shall not have to appear in court to testify publicly, and that on apprehending a rapist the local court shall proceed against him to final judgment within twenty-four hours.[17]

Mr. Hersey of Maine introduced a still different proposal which he believed to be the most practical of all. It was suggested to him by President Harding. He sought the creation of a commission made of both races to study the problem of lynching further and then to submit a report on the entire subject.[18] The author must say, however, that this appears to him to be just an attempt to sidestep an issue upon which enough research for intelligent analysis had already been made.

17 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 546.

18 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1019.

CHAPTER VII

MISCELLANEOUS ARGUMENTS

Proponents of the Bill

Because each side presented at random various contentions that cannot be accumulated under any one specific heading, the author has termed this section of the discourse "Miscellaneous Arguments".

The first of these was the accusation on the part of Representative Goodykoontz that the opposition had refused to discuss the real issues for fear of defeat. He contended that because they were in a hopeless minority, the Democrats in the House were resorting to a filibuster in order to prevent the measure from reaching a vote prior to the holiday recess. For three hours when no business was under consideration, the Democrats even prevented the Bill from being taken up. The Democrats also absented themselves to prevent a quorum thus stopping all opportunities for a vote. When roll call was taken there were one hundred seventy-four Republicans present while the Democrats numbered but seven.[1]

1 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1018.

A second contention was that of Representative Dyer when he declared that wherever there is a recognized duty, the Federal Government should have the power to fulfill that duty. He referred to the duty of the United States as a world power to protect foreigners within its portals and yet the inability to do so that was manifested in the first chapter of this discourse.

Still a third argument stressed the dangerous tendency to excuse an unlawful act. This was directed at the Congressmen who had actually upheld lynching as an institution necessary to prevent social equality on the part of the Negro.

Mr. Dyer entertained a fourth argument to the effect that his bill simply gave a man the same protection for his life that was accorded to the protection of his civil rights.

And then, of course, one always finds in any suggestion for a new law that a list of famous men and organizations is cited as favoring the proposal. The Dyer Bill was no exception. In its list it included the following:

> The Republican Party, which received such a large majority at the last general election,

adopted as a part of its platform at Chicago the following: "We urge Congress to consider the most effective means to end lynching in this country; which continues to be a terrible blot on our American civilization".

President Harding in his first message to Congress on April 12, said: "Congress ought to wipe the stain of barbaric lynching from the banners of a free and orderly representative democracy".

Ex-President Wilson, on July 26, 1918, issued an appeal to the American people to stop lynchings. "I, therefore, very earnestly and solemnly beg that the governors of all the states, the law officers of every community, and above all, the men and women of every community in the United States, all who revere America and wish to keep her name without stain or reproach, will cooperate, not passively merely, but actively and watchfully to make an end of this disgraceful evil. It cannot live where the community does not countenance it."[2]

In May, 1919, representatives from twenty-nine states and the District of Columbia met in a national conference in New York City and adopted and issued the following: ---"they urge upon the Congress of the United States nation-wide investigation of lynching, and mob murder, to the end that means may be found to end this scourge". This appeal was signed by leading citizens from all sections of the country. Among them were:

A. M. Fleming--Former President of the Georgia Bar Association.
R. W. Bingham--Publisher of Courier Journal
C. J. Bonaparte--Former Attorney-General of the U.S.
A. T. Stovall--Former President of the Mississippi Bar Association
J. Harmon--Former Attorney-General of the U.S.

[2] U. S. Congress, 67th, 1st sess., House Report 452 (Oct. 31, 1921) page 3.

J. H. Kirkland--Chancellor of Vanderbilt University.
F. A. McKenzie--President Fisk University
A. H. Roberts--Governor of Tennessee
G. M. Bailey--Editor of Houston Post
W. S. Sutton--Dean of Department of Education, University of Texas.[3]

Honorable L. C. Dyer,

"---Sir: Permit me to bring to your attention the following resolution adopted by the 39th annual convention of the American Federation of Labor expressive of the sentiments of the organized labor movement of America in opposition to mob rule and lynching.---"[4]

Sam Gompers,
President

It was of lynching that President McKinley spoke in his annual message of 1899, when after quoting Harrison, he said: "I earnestly recommend that the subject be taken up anew and acted upon during the present session. The necessity for some such provision abundantly appears."[5]

Theodore Roosevelt declared:

One of the great embarrassments attending the performance of our international obligations is the fact that the statutes of the United States are entirely inadequate. They fail to give the national government sufficiently ample power, through the United States courts and by the use of the army and navy, to protect the aliens in the rights secured to them under solemn treaties. There should

[3] Congressional Record, 67th Cong, 2nd sess., (Jan. 4, 1922) page 789.

[4] Ibid., page 791.

[5] U. S. Congress, 66th, 2nd sess., House Report 1027 (May 22, 1920) page 7.

be no particle of doubt as to the power of the national government completely to perform and enforce its own obligations to other nations. The mob of a single city may at any time perform acts of lawless violence against some class of foreigners which would plunge us into war. That city by itself would be powerless to make defense against the foreign power thus assaulted, and if independent of this government it would never venture to perform or permit the performance of the acts complained of. The entire power and the whole duty to protect the offending city or the offending community lies in the hands of the United States Government. It is unthinkable that we should continue a policy under which a given locality may be allowed to commit a crime against a friendly nation, and the United States Government limited, not to preventing the commission of the crime, but, in the last resort, to defending the people who have committed it against the consequences of their own wrongdoing.[6]

The American Bar Association in its meeting in San Francisco last August resolved that "further legislation should be enacted by the Congress to punish and prevent lynching and mob violence."[7]

6 Ibid.

7 Editors, "Lynching, A National Evil", Outlook, Vol. CXXXII, page 596 (Dec. 6, 1922).

Opponents of the Bill

Representative Buchanan argued that the punishing of a whole county for the unlawful act of five members thereof was certainly unfair.[8]

Representative Summers feared the increase of rape as a result of the proposed law.[9]

Representative Tillman of Arkansas felt that Congress was certainly wasting its time on the Dyer Bill when it should have been considering more vital issues. Stabilizing exchange by the appointment of a commission to cooperate with foreign powers was to him far more necessary and world-wide in scope than waiting "until this Republican Congress stabilizes the value of dead rapists".[10]

Representative Tillman also furnished a delightful contrast with the unique argument that lynchings would increase for profit.

8 Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 466.

9 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 799.

10 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1011.

> Do you not know that under this bill, if it passes, lynching bees will become popular, because they will pay huge dividends? Aunt Malinda will want to cash Rastus in. Alive he is a liability; dead he is a fortune, and she and five confederates will form a battalion of death, and when Rastus visits a hen roost or threatens to commit or does commit some public offense, as mentioned in Section I, he will be lynched by five men in masks in due and ancient form, strictly following the terms set out in this threatened legislation. The bereaved widow of the departed can settle with the mob on easy terms and have enough money left to attract a better looking husband.[11]

Mr. Collins of Mississippi condemned the Bill on the grounds that it was really aimed at strikers.[12]

[11] Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1012.

[12] This looks like a bid for labor votes.

CHAPTER VIII

POSSIBLE DETRIMENTAL EFFECTS OF THE DYER BILL

At this time there shall be a reversal of the procedure of presenting the case for the Bill first. In this chapter it shall be necessary to present first the case of those opposing the Dyer measure and last the case of its proponents. This is an essential change of procedure necessitated by the fact that the opposition first made the arguments in this section. These arguments introduce detrimental conditions that the opposition admonish us to avoid.

WILL SECTIONALISM INCREASE?

Opponents of the Bill

The first of these detrimental conditions was a schism of the North and South. The principal reason for this possibility, said the Southern Congressmen, was the opposition of the South to Federal intervention and the feeling that the Dyer Bill was "sectional" legislation. Mr. Byrnes of South Caro-

lina claimed that it would require a huge Federal police to enforce the law because the Federal Government would have to acquire evidence against the defendants, the county, and the county officials. He said another disadvantage would be the feeling on the part of the state that the Federal Government was intervening in an exclusively state jurisdiction.[1] Mr. Byrnes also scored the Dyer group when he demonstrated that the states had merely sat back and placed all the burden of enforcement on the Federal Government in the case of the Volstead Act, and violations of the Volstead Act were on the increase. Byrnes contemplated even less cooperation between state and Federal officers when the presence of the latter would be resented by the states' inhabitants.[2] You can see the Southern point of view even more clearly in this vehement attack by Mr. Watkins of Louisiana:

> That this bill is intended as an attack on the South is clearly shown by the report from the committee, which includes a list containing the names of seventy-four Negroes and six white men lynched from January 1 to December 31, 1919.

[1] Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 544.

[2] Ibid.

> This list gives all of these cases as having occurred in the South and not a single one of them is reported from the North, only two being reported from Colorado, one from Kansas, and one from Washington in the West.[3]

To show how little the South cooperated in attempts to apprehend lynchers, evidence was offered demonstrating that even rewards failed to produce results. The San Antonio (Texas) Express (Newspaper) had a $100,000 fund to use as rewards for aiding in the conviction of lynchers. In the two years of the fund's establishment no reward claims were presented. When Berry Washington was lynched in Milan, Georgia, $1500 reward was offered, but never claimed. A $1300 reward was offered for the lynchers at Ocmulggee, Georgia. The governor of North Carolina offered rewards of $400 each for members of a mob that lynched a Negro at Franklinton, North Carolina. All the foregoing stipends were never claimed! Often special grand juries were called, but they have generally reported that they were, "unable to find information as to the identity of any of

3 Congressional Record, 66th Cong., 2nd sess., (May 25--June 5, 1920) page 8029.

the lynchers".[4]

Writers outside Congress seem to have lent support to the "sectionalism" argument since. J. H. Chadbourn, assistant professor of law at the University of North Carolina, declared that Southern professional men were absolutely opposed to Federal legislation against lynching. A questionnaire was sent out asking for an expression of approval or disapproval of the Dyer Bill with its $10,000 penalty on the offending county. "Out of two hundred thirteen responses, one hundred ninety-four expressed emphatic disapproval, only fourteen approval, and seven were qualified".[5] Mr. Chadbourn went so far as to say that Southern lawyers and judges so opposed the Dyer Bill that it could hardly be expected to become law.

The same writer offered as further results of the questionnaire a number of reasons given by the public for the failure to convict lynchers. They are as follows:

1. Refusal of persons with first hand knowledge

[4] U. S. Congress, 66th, 2nd sess., House Report 1027 (May 22, 1920) page 17.

[5] J. H. Chadbourn, Lynching and the Law, (1933) page 118.

to testify.
2. Trial jury verdict actuated by local prejudice in lieu of consideration of evidence.
3. Failure of the grand jury to make adequate investigation.
4. Failure of the prosecuting officer to investigate and furnish the grand jury with evidence.
5. Nolle prosequi by prosecuting officer.
6. Adverse trial court rulings on motions and evidence.
7. Reversal by appellate court on non-prejudicial error.[6]

These anwers indicate that the South didn't want to punish lynchers.

Another outside writer summed it all up, when he remarked that the only remedy for lynching is a strong public sentiment against it. If this public sentiment was not manifest as the opponents of the Bill alleged, then surely the Bill could be expected to create a feeling of sectional dissension which would tend to build a new tension between North and South.

[6] Ibid.

Proponents of the Bill

Mr. Dyer and his colleagues were not at a total loss in answering the cries of, "Sectionalism!" Witness the reply of Mr. Fess of Ohio who argued that had the states crying against sectionalism protected their citizens, no such law would have been proposed. He said that to apply the law everywhere is not sectional; but if the crime predominates in one particular area, then the crime itself is sectional rather than the law.[7]

The Dyer group went on to show that many Southern newspapers had espoused the Bill, hereby demonstrating that sectional rivalry was not likely to be inflamed as much as the opposition supposed.

> I have here an editorial from the Chattanooga Times condemning lynching and calling upon Congress to enact a law that will punish those who are guilty of it, dated Jan. 28, 1921. I have here the Dallas Morning News, containing the same thing, and the Independent of Elizabeth City, North Carolina, in which it says, "Write me down as strong for this Bill", and says that "I would not draw a single one of its ferocious teeth". The Greensboro, North Carolina, Daily News of Dec. 10, 1921, is equally

[7] Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 543.

strong in condemnation of lynching and for the enactment of a law by the Congress of the United States. And so with the Dallas (Texas) Journal, the New York Times, The New York Tribune, and the San Antonio Express.

The Independent, Elizabeth City, North Carolina remarks: "I have read the Dyer Bill through and through and I am astounded that such a bill has been favorably reported. I am astounded because it is such a good bill.--- If the Dyer Act is a slap at the South it is because the South deserves to be slapped".

The New York Tribune, Wed., Dec. 21, 1921, says: "Since state authority has failed to suppress this evil, and Federal intervention is perfectly legitimate, it is only common sense for Congress to take a hand in making lynching more hazardous and expensive for those who countenance it or take part in it".

The Saturday Evening St. Louis Star of Dec. 24, 1921, declared: "It is time for the Government to step in and put an end to a situation which menaces the white race as much as it does the colored".

The New York Tribune, Fri., Dec. 16, 1921 says, "The Dyer Bill is drastic. But a drastic remedy is needed for the loathsome lynching disease".

The San Antonio Express of Mon., Dec. 12, 1921, states: "---Pass the Dyer Bill--and enforce it to the limit, with all the power of the United States Department of Justice".[8]

The Times, St. Louis, Mo., Oct. 22, 1921, prints; "The approval by the House Judiciary Committee of the Dyer anti-lynching bill promises early report of the measure. It con scarcely be doubted that the bill will become a law. Its defeat, supposedly, could only result from the congestion of legislative work--not because a majority of House and Senate could fail to favor any sober and proper effort at reducing mob violence throughout the country".[9]

8 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 788.

9 Ibid., page 792 and 793.

Even Mr. Sumners, who has been quoted constantly in opposition to the Measure, was willing to assert that the Southerners in general were sick and tired of lynching and were willing to say to the Federal Government, "If you can do it, for God's sake come and do it!"[10]

One outside source relates that South Carolina actually issued an appeal for Federal intervention.[11]

In all fairness, however, despite the careful choice of evidence by the Dyer group--it appears that the more representative element of the South did feel that the legislation in question was sectional. The rank and file of the Southern states opposed Federal intervention, all right, and demonstrated none too cooperative a spirit in its behalf. The fact that the Southern Congressmen were the bulwark of the opposition of the Bill verifies this conclusion rather clearly.

10 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 798.

11 R. Nash, "The Lynching of Anthony Crawford", Independent, Vol. LXXXVIII, page 456 (Dec. 11, 1916).

WILL RAPE INCREASE?

Opponents of the Bill

A second problem to be created by the Dyer Bill if passed was, according to the opposition, the increase of rape. It may be difficult for the reader to gather the extreme position of the Southerner on this crime. To him it is infinitely worse than murder; it is the most terrible crime known. This idea may be clarified by the following excerpt from Representative Aswell:

> Then when a black brute assaults a neighborhood girl, one we well know, a bright fascinating girl with infinite promise in which we all rejoice, when the brute assaults her, crushes out every spark of her hope into the unspeakable Hell, men and boys will rush to the rescue to protect their own women from the peril of the monster at large among them.[12]

Representative Sumners goes even further:

> And it is a rather interesting thing too, that as society has established legislatures and courts men in my part of the country have never yielded to the courts established by legis-

12 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 546.

> latures or to laws established by legislatures the protection of their women. There is just one thing they will not litigate. Nowhere under God Almighty's sky will they yet litigate the issue of a foul wrong committed against their women.[13]

Now that it is seen how vital it is to the Southerner that rape be prevented, consider the means by which he states the Dyer Bill will increase it. The crux of the argument is found in the reasoning of Mr. Aswell of Louisiana. He feared that the Dyer Bill would give courage to the rapist by giving him a better opportunity to escape. Aswell went so far as to claim that conditions would become so bad that in some places it would not be safe for a white woman to live.[14]

Mr. Garrett of Tennessee summarized the oppositions's arguments when he suggested,

> Mr. Speaker, this bill ought to be amended in its title so as to read: "A bill to encourage Rape".[15]

[13] Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 799.

[14] Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 545.

[15] Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 548.

Proponents of the Bill

The reply of the Dyer adherents on the crime of rape was mainly composed of the contention that their opponents had greatly exaggerated the connection between lynching and rape. Mr. Campbell of Kansas offered this reply. He insisted that by listening to the Southern arguments one would gain the impression that all lynchings were due to rape. Campbell offered an analysis by the governor of Georgia who found that out of one hundred thirty-five cases of lynching in the past two years (1919-1921) only two were cases either of assault or attempted assault upon white women.[16] Campbell argued further that lynching was not justified to abolish rape when only 19% of the 3,500 lynchings in the last thirty years (1891-1921) were due to rape.[17]

Mr. Dyer added the following statistics to show that ravishment is not the chief cause of

16 Mr. Byrnes said the Governor of Georgia had repudiated the above statement at a later date.

17 Congressional Record, 67th Cong., 2nd sess., (Dec. 19, 1921) page 554.

lynchings: The Tuskegee Institute figures gave 4096 lynchings from 1885-1921; only 810 of these were because of rape or attempted rape. The Association for the Advancement of Colored People figures show 3,434 lynchings. Of these 570 were charged with rape or attempted rape from 1889-1919.

> It is especially emphasized in this connection that there have been many lynchings where the victim was not even accused of rape but in which cases the lynchers gave rape as the cause in order to justify their action.[18]

From 1914-1918 there were 264 Negroes lynched. Rape was the alleged cause of twenty-eight.

> It might be stated further that out of thirty-seven persons indicted for rape in the first degree during 1917 in New York county not a single one of those cases was that of a colored man.[19]

18 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 787.

19 Ibid.

WHAT WILL HAPPEN TO STATES' RIGHTS?

Opponents of the Bill

The loss of states' rights was customarily bemoaned as a necessary sequence to this as to all other increases in Federal power. To lose states' rights would surely be a problem of greater magnitude than lynching, said the opposition. Rep. Buchanan of Texas waxes oratorical over the deviltry of damage to the sacred doctrine of states' rights.

> The United States entered its career for mutual and reciprocal advantage. But independence and self control never surrendered by word or act of the states, was a supreme and ideal principle, fostered and cherished; an immortal soul within the entity of each one of the cooperating state sovereignties. A premeditated absolute sovereignty, begotten and conceived in the ideal spirit and experience of "give me liberty or give me death".[20]

Mr. Reavis of Nebraska expressed the danger to states' rights in concrete form when he reported the results of a conversation with the assistant

[20] Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 459.

Attorney-General. Mr. Reavis was addressing another Congressman when he said,

> If the gentleman is familiar with the hearings before the committee on the Judiciary at the time that the bill was before that committee, he will recall that the question was asked Colonel Goff, the Assistant Attorney-General, whether if this bill were constitutional and the Federal Government, which heretofore had always been in the forum of the states, it would be possible for the Federal Government to punish embezzlement and larceny and assault and battery and that Colonel Goff replied that it would.[21]

The conclusion naturally drawn from this statement was that the Dyer Bill would open a precedent for taking over all policing within states and establishing centralized government. The author has dealt with states' rights far more in detail in the chapter on constitutionality. Suffice it at this time to record the fears accompanying the possible loss of those rights.

21 Congressional Record, 67th Cong., 2nd sess., (Jan. 4, 1922) page 800.

Proponents of the Bill

The Dyer adherents' attitude toward the fear of losing states' rights may be found for the time being in the position taken by Representative Madden of Illinois. He could not see why the South's Congressmen were willing to divide the police power of the state with that of the nation on the question of prohibition, but not on the question of lynching.[22] In other words the proponents were content to disclose a precedent for Federal intervention in another field and say, "If it was done here, why can't it be done in the matter of lynching?"[23]

22 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1008.

23 One must admit, however, that if this argument were to lead to its ultimate conclusion--that conclusion would similarly excuse every encroachment on the rights of the states until those rights ceased to exist.

WAS THERE AN ULTERIOR MOTIVE IN PROPOSING THE DYER BILL?

Opponents of the Bill

Here an argument is proposed by the opponents of the measure that the real motive for the Dyer Bill was unworthy of its presentation. The chief claim here was that the Bill was proposed for political purposes by the Republican party. A very nice statement of the point was made by Representative Hersey:

> I can understand the zeal of those who view this bill from the standpoint of political expediency. They say in so many words, "This Republican Congress can satisfy the colored people of the South by the enactment of this legislation. If the Supreme Court declares it unconstitutional, which it doubtless will, if enacted, then the colored voters will have nobody to blame but the Supreme Court, and as the judges of that Court are appointed for life and do not, like the Republicans, come up every two years to be elected, they can suffer no harm and the party will discharge its responsibility and in another way have taken care of the recommendation of the President". (Applause)[24]

Representative Buchanan characterized the Bill as just another Republican attempt to capture Negro votes. Representative Aswell agreed, but also added that the elections were only a year away and that the

[24] Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1020.

Republicans needed votes to stem the rising tide against their party.

Mr. Tillman very neatly produced the figures on the exact Negro vote in Mr. Dyer's district as still further proof of a political motive.

> The author of this bill represents the twelfth district of Missouri. In his district are the following wards in the city of St. Louis containing Negro citizens:
>
> | | |
> |---|---|
> | Ward 5 | 4,708 |
> | " 6 | 7,665 |
> | " 7 | 1,742 |
> | " 11 | 9,412 |
> | " 15..(11 precincts out of 14)... | 11,211 |
> | " 17 | 13,378 |
> | " 23..(13 out of 15 precincts)... | 4,977 |
> | Total | 43,113 |
>
> The Negroes have a majority in ward 17 and clearly hold the balance of power in this district, and at the last election Mr. Dyer was opposed by a Negro named Robert Owen, the nominee of the Farmer-Labor Party, and Samuel Rosenfeld, a Democrat.
>
> The Times of Oct. 23, 1920 said: "Dyer appealed to the voters to vote for him declaring that every vote cast for Robert Owen, Negro nominee would mean a vote for Samuel Rosenfeld, whom he branded as a Texas Democrat".[25]

Representative Tillman further suggested that the Republicans were putting up the Dyer Bill as a political retaliation against Southern support of Prohibition. He emphasized that Mr. Dyer was a

25 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1012.

stalwart wet. Tillman's final blow was the introduction of the following evidence:

> Times of Oct. 23, 1921: "Henry Lincoln Johnson, a Negro Republican national committeeman from Georgia, urged the Negroes to vote the straight Republican ticket, saying that during the regime of President Wilson, 3,961 Negroes have been lynched---". Johnson was appointed by the Republican President to the office of recorder of deeds for the District of Columbia.[26]

And now one finds that even a Republican supported these contentions of bad faith on the part of the Dyer group. Representative Hersey testified that:

> The late Republican national convention at Chicago desired above all things to break up what is called the solid South and to win and secure, if possible, for the Republicans the vote of the colored people. Accordingly, the makers of the platform inserted the following: "We urge Congress to consider the most effective means to end lynching in this country, which continues to be a terrible blot on our American Civilization." What Congress could do to end lynching never troubled the politicians at Chicago.[27]

The following excerpt from the New York Times seems to lend further support to the contention that the Dyer Bill was just a bid for Negro support:

The Negroes made their first effective entry

26 Ibid.

27 Congressional Record, 67th Cong., 2nd sess., (Jan. 10, 1922) page 1019.

> into the industrial life of the North in the years of the World War when immigration was restricted. The number engaged in manufacturing and mining grew from 692,409 in 1910 to 960,039 in 1920--an increase of 35.8%.[28]

The opposition's case on "ulterior" motives may be appropriately concluded by Representative Buchanan's vitriolic application of epithets. Students of the spoken word, take notice! Here is some real oratory. Said Mr. Buchanan of the Dyer Bill,

> Its political aim is partisan power. Its political motive is partisan advantage. Its political hope is partisan privilege. Its political fear is partisan loss. Its political prayer is partisan votes. Its political spirit is partisan greed. Its political principle is partisan hate. Its political passion is partisan life everlasting, ad infinetum, and with all the political plunder and prerequisites, "for me and my wife, my son John and his wife, us four and no more"--proof, the Newberry senatorship campaign in Michigan.[29]

The author is not able to include any special answer to these accusations. The Dyer group seemed willing to rest their motives upon the description of deplorable lynchings as presented in Chapter I. The reader must make his own choice.

28 New York Times, April 15, 1934.

29 Congressional Record, 67th Cong., 2nd sess., (Dec. 17, 1921) page 467.

CHAPTER IX

THE DYER BILL IN THE SENATE

Concerning the Dyer Bill's sojourn in the Senate, there is really very little to say. The arguments made were the same as those the exhaustive House debates produced. The report from the Senate committee on the judiciary was essentially the same also--save for the few amendments discussed in an earlier chapter. Even the cases cited on the constitutionality of the Bill had a familiar ring. Only one major difference appeared. The Senatorial opponents of the measure threatened a filibuster unless it was withdrawn. Although the proponents were in the majority, a very determined opposition gave every indication of wiling away time until dooms-day if any further attempt were made to gain its passage.

Because of the aforementioned developments, Senate debate occupied very little space in the Record. At first Senator Shortridge of California tried his level best to force a vote on the issue, but those who had warned of a filibuster showed they meant business as the following citation of the Record dem-

onstrates,

> Mr. WATSON. Has the Senator conferred with a sufficient number of his colleagues on the other side to be able to speak for them and know that they will second his efforts along the line he suggests?
>
> Mr. UNDERWOOD. I have not conferred with them as in a conference; that was not necessary. The Senator knows perfectly well that the representatives in the Senate from a very large portion of the United States, representing a number of States, will never allow a force bill to pass. A conference is not necessary to enlighten us on that point. The record votes here all morning are a demonstration of what I say, that I am not saying this for myself, that I am not making this statement alone. Let the Senator consider the record of the roll calls in the Senate this morning.
>
> If you gentlemen want to continue, after this candid statement of the case, and keep this bill before the Senate, when you know it is going to be blocked and can not be passed, thereby stopping the transaction of all other business, go ahead, and we will have roll calls and move adjournments day and night. We can alternate between roll calls and motions to adjourn. If you do not intend to do that, we might as well come to an understanding and lay the bill aside, because you can not pass it. You know you can not pass it. Then let us go along and attend to the business of the country.[1]

In a very short time the proponents gave up as futile any further pressure for passage and House Report 13 was dead. It was dead regardless of the majority in its favor; it was dead regardless of its favorable recommendation from the Senate Committee on the Ju-

[1] Congressional Record, 67th Cong., 3rd sess., (Nov. 28, 1922) page 332.

diciary.

The author feels he owes it to the reader to demonstrate the exact manner in which the Dyer Bill was killed. With this purpose in mind I enter an excerpt from the Record. Senator Lodge spoke for the Dyer group, while Senator Underwood upheld the opposition.

Mr. LODGE. I move that the Senate proceed to the consideration of executive business.

Mr. UNDERWOOD. Pending the motion, will the Senator allow me to ask him a question?

Mr. LODGE. Certainly.

Mr. UNDERWOOD. I understand from what I have seen in the newspapers that the majority party in this Chamber have concluded to let the so-called Dyer bill go over, and if that is the understanding of the action intended by the majority party, I do not desire to make any further motion that will interfere with business. I ask the Senator from Massachusetts if that is the case?

Mr. LODGE. I stated to the newspapers that the Republican conference instructed me to say that they would not press the bill further at the coming session or at the session which is just expiring.

Mr. UNDERWOOD. That is, between now and the 4th of March?

Mr. LODGE. Between now and the 4th of March. Those were the instructions given to me and which I gave to the press.

Mr. UNDERWOOD. I wish to say that I am very glad indeed we have reached that understanding. There was no desire on my part, or on the part of those of my colleagues with whom I was acting, that we should delay the public business, but the bill is so clearly in contravention of what we regarded as a great constitutional right that we felt we were justified in going to extremes in trying to prevent its passage.

We have no apologies to offer for our fight, and we have nothing to take back in reference to what we have done. On the other hand, should

the bill again appear with an effort to take it up in the Senate, we would renew the fight we have made before. Of course I do not think a fight of this kind could be justified except as a very extreme measure against a matter which we consider an invasion of a public right. I am only too glad to know that we can come to an understanding and that it will not interfere with the transaction of the public business.

Mr. LODGE. In common with the great body of my colleagues on this side of the Chamber, I believe the bill is right in principle and ought to pass; but the question before the conference was simply whether we should allow the filibuster to go on until the 4th of March with no result. The bill could not pass, as it would be impossible to change the rules now, and the conference decided that they would not press the bill further, as I stated in the public press, at the session which is now expiring or the next session.

Now, Mr. President, I submit the motion that the Senate proceed to the consideration of executive business.[2]

There were a few interesting items during the brief Senate debates that should be covered before concluding this chapter. One such item was the heat of some of the exchanges. A bitterness of a personal nature was shown in the Senate that did not appear in the House. Senators Shortridge of California and McKellar of Tennessee were the major participants.

Mr. McKELLAR. Oh, yes, of course we understand the Senator from California takes that view. We all know that he believes it constitutional. We know that the Senator from California has a very positive view about its constitutionality, and I excepted him from the lawyers on that side of the aisle when I made the

[2] U. S. Congress, 67th, 2nd sess., Senate Report 837, (April 20, 1922) page 32.

proposition. Are there any other lawyers who believe it constitutional?

Mr. SHORTRIDGE. I presume there are.

Mr. McKELLAR. Will the Senator say there are any lawyers on his side of the Chamber besides himself who believe it constitutional?

Mr. SHORTRIDGE. There are greater lawyers than the Senator from Tennessee----

Mr. SHORTRIDGE. I do not think it is timely to enter upon a law lecture in order to teach the Senator from Tennessee some of the fundamental principles of our Government.

Mr. McKELLAR. If I desired such teaching, I certainly would not go to the Senator from California for it; he would be the last Senator in the Chamber to whom I would go.

Mr. SHORTRIDGE. The Senator from Tennessee started off in a method of debate that I do not regard as courteous.

Mr. McKELLAR. The Senator from California should not have made that statement.

Mr. SHORTRIDGE. I will withdraw it if the Senator will amend his reply.

Mr. McKELLAR. The Senator ought to withdraw it. He does himself no credit when he makes such a statement as that.[3]

Another interesting item was the manner in which Senator McKellar made Senator Shortridge, the Senate leader of the proponents, look rather absurd. He did this in three instances. First, he cleverly maneuvered Shortridge into admitting the latter's belief in discrimination against the Japanese and Chinese in California; then he revealed the glaring contradiction in such a policy as compared with a de-

[3] Congressional Record, 67th Cong., 2nd sess., (Nov. 28, 1922) page 334.

sire to insure the equal rights of Negroes. McKellar hurt the Californian's plea considerably by merely drawing attention to the fact that the scattered Japanese could not vote, but the large group of California Negroes could![4]

Secondly, McKellar persistently pinned Shortridge to a concise answer on the number of Republican members of the Judiciary Committee who believed the Bill was constitutional, finally forcing the California Senator to admit that two members only so believed, while the rest expressed doubt on that issue.

Thirdly, McKellar intrigued Shortridge into actually aiding the Southern filibuster by allowing the Californian frequent time taking interruptions while the gentleman from Tennessee had the floor. After each interruption, McKellar would bicker and side-track in reply, later returning to the issue only to chastise Shortridge for having departed therefrom--thus wasting still more time. The only way for the reader to fully enjoy himself is to read that section of the debates referred to in the footnote.[5]

[4] Ibid., page 338.

[5] Ibid., pages 332-338.

CHAPTER X

CONCLUSIONS

In the author's estimation conclusions if offered at all should be brief. Personally, he would rather dispense with a summary and just say that he has presented the facts; let the reader draw the conclusions; but summaries are apropos.

That there was a need for a change was most definitely established by the Dyer group. The inefficiency of state law enforcement was self evident. The principle of equality must certainly be accepted if we are to read the Constitution without blushing. Nevertheless, the fact must not be overlooked that a large number of Americans did not favor equality at the time. Whether or not Congress should have risked enacting an unenforceable law for a righteous principle shall be discussed in a moment. Concerning constitutionality it must be admitted that the opponents of the Bill convinced the writer that it was unconstitutional. On the other hand, however, a new precedent can be set. And then there is always the device of amendment.

Was the Bill practical? Here again the author

was convinced by the opposition. Yes, the principle was fine; but could it be enforced? The predominance of Southern opinion favored inequality between Negro and white. It also favored lynching. One can see that--in spite of Dyer's quotes from Southern newspapers. After all, who killed the Dyer Bill? The Southern Congressmen did. Who talked about "black brutes assaulting white girls, etc., etc"? The Southern Congressmen did. Since their constituents undoubtedly felt the same way, how could the Dyer Bill work? Where would the Federal Government get its witnesses, its policing effectiveness? Why it would have taken the United States army and permanent military occupation of the South to apprehend all of the offenders.

And then this matter of punishing whole counties for offenses committed therein. Punishing the whole group for the acts of a few breeds only discontent, bitterness, and resentment, acting only as an incitement to increased objectionable activity--and that is <u>not practical</u>!

Was the Bill "sectional" in character? No, it applied in all states. Was it taken as sectional by

the South? Yes, it was. Would it therefore tend to divide the nation? The author is afraid so.

Would rape increase? Possibly, if lynchings have a deterrent effect on rape.

What would happen to state's rights? The good old issue--always brought up--never settled. Well, the writer fears that states' rights would suffer. Every act that takes states' rights away in any manner whatsoever lays down a precedent for further encroachment later.

Was there an ulerior motive in proposing the Dyer Bill? Certainly all its proponents were not so motivated; but just as certainly, some were. One must admit the evidence was pretty strong.

And all of this leads where? It points to one conclusion--that the Dyer Bill had a fine goal, but an impractical method of achieving it, as well as a doubtful inspiration. If it hadn't involved the race question, it may have had a different outcome. As it was, the writer agrees with the decision of Congress. The Bill met deserved defeat.[1]

Still there was a need for a change. How to meet it?--by education and the healing effects of

[1] Don't misunderstand the author. He believes in race equality, but the South did not.

time upon Civil War memories. Was the problem ever solved? Yes, and in the manner just prescribed. In 1939 there were three lynchings in the whole United States!

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